(20,361.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 97.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, APPELLANT,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 21, 1907.

1 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 86. Equity.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, Complainant, Appellant,
versus
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Defendant, Appellee.

Transcript of Record.

Caption.

Be it remembered, That at a regular term of the Circuit Court of the United States in the Fifth Circuit thereof, and in and for the Southern District of Mississippi, at Vicksburg, begun and holden at Vicksburg, Mississippi on the 2nd day of July, 1906, and which term adjourned on the 5th day of July, A. D. 1906, the Honorable Henry C. Niles, United States District Judge for the State of Mississippi, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

No. 86. Equity.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

2 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Motion.

The original papers in this cause having been lost, mislaid, or destroyed, and not found after four years' diligent search, the defendants move the Court for the privilege of supplying the record in this cause in order that the cause may proceed to final judgment and decree.

DABNEY & McCABE,
For the Motion.

And the foregoing has the following endorsement thereon, to-wit: Filed & Ent'd Dec. 28 1905 L. B. Moseley Clerk, J. H. Short D. C.

3 YAZOO & MISS. VALLEY R. R. CO.
v.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the defendants the Mayor & Aldermen of the City of Vicksburg and shows to the court that all the original papers in this case have been lost, mi*d*laid or destroyed and they move the court to be allowed to supply the record.

DABNEY & McCABE,
Solicitors for Defendants.

And the foregoing has the following endorsement thereon, to-wit: No. — Circuit Court of U. S. for Western Division of the Southern District of Mississippi. Filed Jan. 2, 1906. Filed & Ent'd. Jan. 2 1906 L. B. Moseley Clerk J. H. Short D. C.

4 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Order.

This cause coming on for hearing upon the motion of the defendants to supply the record in this cause, and it appearing to the satisfaction of the Court that the original papers have been lost, mislaid or destroyed and cannot be found after diligent search and inquiry, it is now ordered that said motion be and the same is hereby granted.

And it further appearing from the agreement on file between the parties complainant and defendant in this cause, that certain papers filed with said agreement are true and correct copies of the original of said papers, except the injunction bond, and said parties having agreed that the record in this cause may be supplied and that said copies may be substituted as and for the original papers in said cause, it is now ordered and agreed that the copies of the original papers filed with said agreement, be and the same are hereby substituted as and for the original papers in said cause, except the injunction bond, and that said copies shall be filed as of Dec. 24th, 1901, and that said copies shall be taken and treated in all respects as the original papers in this cause, and that the cause shall proceed to trial and judgment thereupon.

That as to said injunction bond, it appearing that the complainants did execute and file with and deliver to the Clerk of this Court an injunction bond in due form of law in the sum of $10,000.00 with the Delta Trust & Banking Company as surety, conditioned according to law and according to the emergencies of the particular case, which has not actually been supplied, it is further ordered, by consent and agreement of the parties, that the record
5 in this cause is to be taken and treated in all respects as if

said bond had been actually supplied and filed anew, and the Court, in rendering a final decree in this cause will act accordingly, and will decree as if said bond had been supplied and filed with the papers in this cause. Said papers to be filed as of Dec. 24th, 1901.

Ordered, adjudged and decreed this the 2nd. day of January, 1906.

H. C. NILES, *Judge.*

And the foregoing has the following endorsement thereon, to-wit: 86 Equity The Y. & M. V. R. R. Co. *vs.* The Mayor & Aldermen of the City of Vicksburg. Order allowing Record to be supplied. Filed & Ent'd M. B. p. 147, L. B. Moseley, Clerk. J. H. Short, D. C. Page 147.

6 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Agreement.

It is agreed that in the month of December, 1901, the Yazoo & Mississippi Valley Railroad Company, complainant in the above styled cause, filed a bill in the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, against the Mayor and Aldermen of the City of Vicksburg, a municipal corporation, the defendant in said cause, to enjoin them from levying and collecting certain taxes therein described; that upon the filing of said bill it was presented to the Hon. H. C. Niles and a fiat was issued directing the issuance of an injunction as prayed for in the bill, upon the complainant's entering into bond in the sum of $10,000.00, with proper sureties, conditioned according to law; that on the 24th day of December, 1901, the complainant executed and filed with and delivered to the Clerk of said Court an injunction bond in said cause in due form of law in the sum of $10,000.00, with the Delta Trust & Banking Company, a corporation, as surety, which bond was in all respects conditioned according to law and according to the emergencies of the particular case;; that thereupon a writ of injunction was issued enjoining the defendants from collecting or attempting to collect any taxes on the property of the complainant within the limits of the municipality of the City of Vicksburg, or from selling the complainant's property under any distress warrant,
7 or taking any steps or proceedings whatever in the collection or recovery of said taxes, which writ was duly executed upon the defendants and returned to the office of the Clerk of said Court with the proper return thereon; that on the same day a writ of summons in due form of law was issued, served upon the defendants, and duly returned with the service duly endorsed thereon;

that shortly after the writ was issued all the papers in said cause were lost, mislaid or destroyed and have not since been found, and cannot be found after diligent search and inquiry; that in consequence of the loss of the papers, no plea, answer or demurrer has ever been filed to the original bill in said cause, and that no action whatever has been taken by the defendants towards the collection of the taxes enjoined for the years 1900, 1901 or any subsequent years.

It is further agreed that the paper hereto attached, purporting to be a copy of the original bill in said cause, is a true and correct copy of the same; that the paper marked "Exhibit I" hereto attached, is a true and correct copy of Exhibit I to said original bill; that the paper marked "Exhibit 2" hereto attached, is a true and correct copy of "Exhibit 2 to said original bill; that the paper hereto attached, purporting to be a copy of the writ of injunction issued in said cause, is a true and correct copy of the original writ of injunction, except the return thereon; that the paper hereto attached, purporting to be a copy of the original summons in said cause is a true and correct copy of said original summons, except the return thereon.

It is further agreed that the original papers in said cause may be substituted and that the copies hereto attached and above described may be filed and substituted as and for the original papers in this cause, and that the cause may be tried on such substituted papers, and that said substituted papers shall be treated in all respects as the original papers in said cause. That the injunction bond hereinbefore referred to was substantially in the form and to the effect following, to-wit:

"Know all men by these presents that we, the Yazoo & Mississippi Valley Railroad Company, as principal, and the Delta Trust
8 & Banking Company, as surety, are held and firmly bound, jointly and severally, unto the Mayor and Aldermen of the City of Vicksburg in the penal sum of $10,000.00, the payment of which to be well and truly made we bind ourselves, our heirs, executors and administrators, by these presents, signed with our hands on this the 24th day of December, 1901.

"The condition of the foregoin- obligation is such that if the above bounden principal obligor shall promptly pay any and all taxes due to the Mayor and Aldermen of the City of Vicksburg, this day enjoined in its suit in the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, and also all damages and costs in case the said injunction shall be dissolved, then this obligation shall be void; otherwise shall remain in full force and effect."

Which bond was signed by the Yazoo & Mississippi Valley Railroad Company, as principal, and the Delta Trust & Banking Company as surety; That the injunction bond need not in fact be actually supplied, but the Court shall consider it supplied and treat the cause and the record, and act upon it, in all respects, as if said injunction bond had been actually supplied and was on file with the papers in this cause, and that in rendering its decree it may decree

as if said bond was supplied and on file with the papers in the cause.

It is further agreed that the supplied papers shall be filed with the Clerk of this Court as of Dec. 24th, 1901, and that the defendants have one day's leave to plead, answer or demur to the original bill in this case after said papers have been filed.

It is further agreed that an order shall be entered pursuant to this agreement, supplying said papers.

Witness our signatures this the 28th. day of December, 1901.

SMITH, HIRSH & LANDAU,
Sols. for Complainant.
DABNEY & McCABE,
For the Defendants.

And on the foregoing was endorsed the following, to-wit: Agreement Filed & Ent'd Dec. 24 1901 L. B. Moseley, Clerk, J. H. Short D. C.

9 In the Circuit Court of the United States in the Western Division of the Southern District of the State of Mississippi. In Equity.

To the Honorable the Judges of the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi:

The bill of Complainat of the Yazoo & Mississippi Valley Railroad Company, a corporation of the State of Mississippi, a Citizen of said State and Domiciled therein, a Resident of said State and District and Western Division of said District, Exhibited against the Board of Mayor and Aldermen of the City of Vicksburg, a Municipal Corporation of the State of Mississippi, and a Citizen of said State and Domiciled therein, and a Resident of said State and District and of the Western Division thereof, respectfully shows unto your honors.

I.

That your orator the Yazoo & Mississippi Valley Railroad Company is a corporation of the State of Mississippi, chartered and organized under the laws thereof, domiciled within said State and the Western Division of the Southern District thereof; that the Board of Mayor and Aldermen of the City of Vicksburg is a municipal corporation of the State of Mississippi, and is a citizen of said State and domiciled therein, and resident in said State and District and of the Western Division of said District.

II.

Your orator further shows that prior to the year 1882 certain companies had been incorporated under the laws of the State of Mississippi by the names of the Memphis & Vicksburg Railway Company and of the Mississippi Valley & Ship Island Railway Company; your

orator further shows that the Memphis & Vicksburg Railway Company was incorporated for the purpose of building railroads North through the Counties of Warren, Issaquena, Washington, Bolivar, Tunica, Coahoma, and De Soto, to the Tennessee Line; and from thence under charter to be acquired under the laws of the State of Tennessee; and the Mississippi Valley & Ship Island Railroad Company was incorporated for the purpose of building a line of railroad from the City of Vicksburg to some point on the Gulf Coast of Mississippi.

III.

Your orator would further show that some construction had been done prior to the year 1882 by both the Memphis & Vicksburg Railway Company and the Mississippi Valley & Ship Island Railway Company; but owing to financial inability work had long since ceased on said railroads from about the year 1871 or '72 up to about the year 1880, when some work was commenced on both lines of railroad, and from 1882 was vigorously prosecuted and completed, with the exception that under authority derived from the Legislature of the State of Mississippi the Mississippi Valley and Ship Island Railway Company abandoned their project of constructing a railroad to the Gulf Coast of Mississippi; and construction was commenced in 1882 with a view of continuing from South Vicksburg down to the Louisiana line, so as to make a continuous line from the City of New Orleans, Louisiana via Vicksburg, Mississippi, to Memphis, Tennessee; said continuous line being constructed under charters as follows: On Tennessee Southern from Memphis to the North line of the State of Mississippi; and from North line of the State of Mississippi to City of Vicksburg under charter of the Memphis and Vicksburg Railway Company; and from Vicksburg South to New Orleans, Louisiana, under charter of the Mississippi Valley & Ship Island Railway Company and another charter granted by the State of Mississippi, known as the New Orleans, Baton Rouge, Vicksburg & Memphis Railway Company.

Your orator would further show that when construction was commenced in 1870 or 71 by the said Memphis & Vicksburg Railway Company and the Mississippi Valley & Ship Island Railway Company, certain aid in the shape of bonds had been voted to said companies by the City of Vicksburg; and that construction was subsequently commenced in 1882 it was claimed by the City of Vicksburg that the same terms under which the said aid had been offorded to said railway companies had not been complied with; and certain suits had been instituted in Chancery Court of Warren County, Mississippi, by the municipal authorities of the City of Vicksburg against said Memphis & Vicksburg Railway Company and the Mississippi Valley & Ship Island Railway Company, numbered respectively on the docket of the Chancery Court 1622 and 1623.

Your orator would further show that while said suits were pending the citizens of the City of Vicksburg became extremely anxious to have the machine shops of the said lines of railroad then under construction located at the City of Vicksburg, as they were impressed

with the advantages which would result to the City by the location of said shops in said City. Your orator would further show that after a good deal of discussion between the officers of the said railroad companies and the City authorities, it was decided to obtain authority from the Legislature of the State of Mississippi for both parties to make contracts with reference to the location and maintenance at the said City of Vicksburg of the machine shops of the said railway companies; and an act was approved February 22′ 1884, authorizing the City of Vicksburg through its Board of Mayor and Aldermen and the Memphis & Vicksburg Railway Company, or other such railroads as the Memphis & Vicksburg Railway Company may become hereafter merged into or a part of by consolidation or otherwise, to enter into such contract or contracts with each other relative to the location and maintenance at the City of Vicksburg of the machine shops of the said Railway Company, as they mutually agree upon, together with such limitations, conditions, privileges, immunities, exemption from city taxation, settlement of all claims, disputes and demands of the one against the other, relinquishment of all bonds, subscriptions, stock certificates of either party when held or claimed by the other, rights of way through the streets of said city, closing up and discontinuing streets now open and dedicated to the public, and such other things as may be mutually decided and agreed
12 upon between said City of Vicksburg and said Railway Company; and such other contract or contracts, when reduced to writing and signed by the parties duly authorized thereto by the contracting parties, should be in all respects valid and binding, and might be enforced by any court having jurisdiction thereof; all of which may very fully appear by reference to said Act of the Legislature, which is published in full in the Acts of 1884, p. 917.

IV.

Your orator would further show that in pursuance of the authority granted by said Act, a written contract was made and entered into in the year 1884, which contract was duly signed by John W. Powell, the then Mayor of the City of Vicksburg, and by T. R. Wilson, the then President of the Louisville, New Orleans & Texas Railway Company, the said Memphis & Vicksburg Railway Company and the other companies above named except the Mississippi Valley & Ship Island Railway Company, having been consolidated into one company known as the Louisville, New Orleans & Texas Railway Company. Your orator would further show that by the terms of said contract the said City of Vicksburg agreed to, and did exempt from all municipal taxation for a period of ninety nine (99) years all of the property used or which shall or may be used, for tracks, switches, depots, machine shops, rolling stock, and any and all railroad purposes, except only buildings used for residences or stores, of the Louisville, New Orleans & Texas Railway Company, or its successors, or of any company into which it might at any time be merged by consolidation or otherwise, or of any company which might by foreclosure or reorganization become the owner of its lines of railroad within said city; all of which may more fully appear by reference to

a copy of said contract herewith filed and marked "Exhibit Number 1" and thereby made a part of this bill.

V.

Your orator would further show that after said contract had been duly and legally entered into as aforesaid, and after it had
13 been submitted to a vote of the qualified electors of the City of Vicksburg, and had been carried by a vote of more than two thirds of the qualified voters of said City, that the said Louisville, New Orleans & Texas Railway Company immediately proceeded to acquire by purchase or otherwise a large amount of valuable real estate in the City of Vicksburg for the purpose of locating and maintaining its machine shops in accordance with the terms of the sixth paragraph of said contract; and said real estate was located in that part of Vicksburg as called for by the sixth paragraph of said contract.

Your orator would further show that after said land had been acquired, as aforesaid, said company then proceeded to erect large and expensive, and thoroughly equipped machine shops on said lines of railroad, and has maintained said machine shops ever since they were so erected, as aforesaid, and as a result the City of Vicksburg has greatly benefitted by reason of the fact that a large number of mechanics, machinists, and other skilled laborers, as well as a large number of unskilled laborers, have been employed in said City, whose wages have been paid monthly by the said Louisville, New Orleans & Texas Railroad Company and your orator, its successor, from that time up *the* the present time.

VI.

And your orator further avers that the said Board of Mayor and Aldermen of the City of Vicksburg have, for years, acquiesced up to the year 1901 in the validity of said exemption, and at no time has attempted to tax the property of your orator of the Louisville, New Orleans & Texas Railway Company, and has never attempted to do so until the present year, to-wit: the year 1901. Your orator avers that its property in the City of Vicksburg has been assessed for the year 1901 by the City of Vicksburg at a large valuation, to-wit: the sum of one hundred and eighty two thousand dollars ($182,000.00); and the total taxes which the City of Vicksburg proposes to collect from your orator for the year 1901 amounts to thirty six hundred and forty dollars ($3640.00), by distress or other legal pro-
14 cess unless your orator shall voluntarily pay same.

VII.

Your orator further avers that the Louisville, New Orleans & Texas Railway Company on October 24, 1892, consolidated with your orator and that thereafter the said line of railroad has been owned and operated by your orator under its corporate name of the Yazoo & Mississippi Valley Railroad Company, which said consolidation was authorized by the charters of both the Louisville, New Orleans & Texas Railway Company, and of your orator. Your orator avers

that by reason of said merger and consolidation, the Yazoo & Mississippi Valley Railroad Company became entitled to, and was immediately upon said merger and consolidation possessed of the rights, privileges and immunities, and especially the immunity from municipal taxation, as provided in said contract, theretofore belonging to the said Louisville, New Orleans & Texas Railway Company, a copy of which is herewith filed marked "Exhibit Number 2" and is made a part of this bill.

VIII.

Your orator further avers that by the sixth section or clause in said contract it was provided that the general or main building, repairing and machine shops of the Louisville, New Orleans & Texas Railway Company and its successors shall be located and permanently maintained within the present limits of the City of Vicksburg, North of Fairground Street, and any failure so to do shall forfeit to the said City all lands granted to the said Railway Company by the city, and all lands purchased by the said Railroad Company for or on which to locate said shops as hereinafter in this section prescribed, and shall also forfeit and annul all privileges and immunities granted by this contract, including the right to locate and keep its freight depot South of Clay Street.

Your orator would further aver that by the eighth section or clause of said contract it was provided that the said City of Vicksburg, as soon as authorized to do so by an election to be held under the provisions of the said Act of the Legislature of February 22nd, 1884, shall execute and issue one hundred thousand dollars ($100,000.00) of its bonds in denominations of one thousand dollars ($1,000.00) each, payable to bearer thirty years after the date thereof, and having interest coupons attached, payable semi-annually at the office of the treasurer of said City, said coupons to bear interest at the rate of four per cent. per annum for the first five years after the date of said bonds, and thereafter bear interest at the rate of five per cent. per annum. Said eighth clause of said contract further provides that said lands shall not be delivered by the trustees (meaning trustees provided for in said eighth section) except upon the delivery to them for the said city of one hundred thousand dollars ($100,000.00) in the capital stock of the Louisville, New Orleans & Texas Railway Company which it may have become merged into or a part of by consolidation or otherwise.

Your orator would further show that in pursuance of a proclamation of John W. Powell, the then Mayor of the City of Vicksburg, a special election was held on Oct. 6th, 1885, for the purpose of allowing the qualified voters of the City of Vicksburg to vote for subscription or against subscription to the capital stock of the Louisville, New Orleans & Texas Railway Company one hundred thousand dollars ($100,000.00) of the thirty year coupon bonds of said City.

Your orator further avers that said election was duly held and the subscription was carried by the requisite two-thirds majority of the qualified voters of the said city, and that the said bonds were issued to the said Louisville, New Orleans & Texas Railway Com-

pany and were sold and disposed of by the said Company to various persons, and the one hundred thousand dollars capital stock was at the same time delivered to said City of Vicksburg. And the said City of Vicksburg still has and claims and owns the one hundred thousand dollars of capital stock.

Your orator further avers that from this it will be seen
16 that notwithstanding the fact that the said City of Vicksburg has reaped large benefits from the same for some fourteen years past, from the fact that the said machine shops have been located and maintained in the said City of Vicksburg, and a large number of skilled mechanics have been constantly employed in the said city, receiving wages which are disbursed from month to month and amounting from twenty five dollars to forty dollars per month, and a large number of desirable citizens have been added to the City of Vicksburg, and a large increase in the taxable values has therefore followed as a consequence of the location of the said shops in the City of Vicksburg, and notwithstanding the fact that the city has and still holds the said one hundred thousand dollars of capital stock of the said Railway Company, and notwithstanding the fact that the property acquired by the said Louisville, New Orleans & Texas Railway Company and now owned by and used by complainant as successor to the said Railway Company, is subject to be forfeited to the City in case said shops should be removed, yet the said City of Vicksburg proposes to abrogate one of the most beneficial features of said contract as far as your complainant, as the successor of the said Louisville, New Orleans & Texas Railway Company, is concerned by subjecting the property of your complainant to municipal taxation in violation of the second provision of the said contract as will hereinafter be seen.

IX.

Your orator further avers that the said defendant, the Board of Mayor and Aldermen of the City of Vicksburg, pretend that the right of exemption from municipal taxation in accordance with the contract hereinbefore set forth has been lost or is illegal and in violation of the Constitution of the State of Mississippi. Your orator denies and avers that the present Constitution of the State of Mississippi, being adopted since said contract rights were created, as aforesaid, said contract rights were protected by Section 10, Article 1, of the Constitution of the United States, and cannot be impaired by
17 the Constitution of November 1st, 1890, of the State of Mississippi; and your orator invokes the protection and benefit of Section 10, Article 1, of the Constitution of the United States, in this case.

X.

The premises considered, and that justice may be done, your orator prays that a writ of subpœna for said defendant, the Board of Mayor and Aldermen of the City of Vicksburg, be issued and that said defendant may be required to answer this bill fully and at large as if thereunto specifically interrogated, their oaths to such answers being hereby expressly waived.

Your orator prays that pending this litigation your honors will issue a writ of injunction to the effect as follows:

That the defendants be and are hereby enjoined from collecting or attempting to collect any taxes on the property of your orator situated within the limits of the municipality of the City of Vicksburg, or of selling your orator's property under any distress warrant or taking any steps or proceedings whatever for the collection or recovery of such taxes; and that on final hearing your honors will further adjudge and decree that said contract is legal and binding for the full period as provided in said contract, and any other such and further general relief as your honors may deem proper and meet.

SMITH, HIRSH & LANDAU,
Sols. for Complt.

And the foregoing has the following endorsement thereon, to-wit: Bill of Complaint Filed & Ent'd Dec. 24, 1901. L. B. Moseley, Clerk, J. H. Short, D. C.

18 EXHIBIT I TO THE BILL.

Mayor's Proclamation.

Special Election.

I, John W. Powell, Mayor of the City of Vicksburg, do hereby proclaim and announce in accordance with an ordinance adopted by the Mayor and Aldermen at a meeting held on September 7th 1885, there will be held a special election in the several wards of the city on Tuesday, October 6th, 1885, said election to be held for the purpose of allowing the qualified voters of the city to vote, "For Subscription" or "Against Subscription" to the capital stock of the Louisville, New Orleans & Texas Railway Company One Hundred Thousand Dollars ($100,000.00) of the thirty year coupon bonds of said City.

The following being the contract and conditions upon which said subscription is to be made:

Contract between the City of Vicksburg, Mississippi, and the Louisville, New Orleans and Texas Railway Company.

This contract is entered into between the above named corporations under and by virtue of the provisions of an Act of the Legislature of the State of Mississippi, entitled: "An Act to authorize the City of Vicksburg, in this State, to contract with the Memphis & Vicksburg Railroad Company, or such other railroad company as said Memphis & Vicksburg Railroad Company may hereafter become merged into or a part of, by consolidation or otherwise, for the location of the machine shops of said Company at said city, and other purposes." Approved February 22nd, 1884.

It is agreed between said two corporations as follows:

First. Said city hereby surrenders and releases all stock heretofore issued, or agreed to be issued to it by said Memphis & Vicksburg

Railroad Company, and releases and renounces all claims and demands of every kind upon which it has instituted suir or suit has been instituted in its name in any Court of this State against said Memphis & Vicksburg Railroad Company, the Mississippi Valley & Ship Island Railroad Company, or the Louisville, New Orleans & Texas Railway Company, either alone or in connection with other defendants; and agrees to forthwith dismiss all suits now pending in its behalf against any or all of said companies, and particularly suits No. 1,622 and No. 1663 in the Chancery Court of Warren County.

Second. Saic city agrees to and does hereby exempt from all municipal taxation for a period of ninety-nine years all of the property used or which shall or may be used for tracks, switches, depots, machine shops, rolling stock, and any and all other railway purposes (except only buildings used for residences or stores) of the Louisville, New Orleans & Texas Railway Company or of its successors, or of any company into which it may from time to time be merged by consolidation or otherwise, or of any company which upon foreclosure or reorganization, may become the owners of its line of railroad within said city.

Thi-d. Said city shall forthwith close all streets south of Depot street and north of Fairground Street, and between Levee or Water Street, and the eastern boundary line of the proper- or right of way as at present located, of the said Louisville, New Orleans and Texas Railway Company, excepting Speed Street. Upon said last named street said Railway Company shall construct a good and substantial bridge so as to extend the present bridge on said street to Levee or Water Street, and in Levee or Water Street said Company shall build good and substantial approaches to said bridge from both north and south.

Fourth. Said City grants to said Railway Company its successors and assigns, the perpetual privilege and right of locating operating and maintaining a sidetrack in Levee or Water Street north of Clay Street and east of said Company's present main line for passenger and freight depots, and also a like right and privilege of locating, operating and maintaining such other tracks as may be necessary for passenger or freight depots, or both along or across all streets of said city west of Washington Street and east of said main line, and north of but including, China Street; but such tracks and switches shall be constructed and maintained level with the established grade of such streets, and so as not to unreasonably impede travel thereon, and said Railway Company shall always keep said streets in repair between its rails and for a distance of three (3) feet on either side, or the same may be done by the city at the cost and expense of said Company.

Fifth. Said Railroad Company shall locate and keep*t* its passenger depot within the present city limits north of Clay Street and west of Washington Street and east of its present railroad track.

It shall be permitted and shall have the right without impairing any privilege heretofore granted to locate and keep its freight depot

within the present city limits at any point north of Speed Street. But if the said Railroad Company will and shall locate its freight depot north of Clay Street then the said city shall and does hereby donate and convey to *ti* all of its present interest and title in and to the lands in said city, lying between Grove Street and Washington Street, Glass bayou and the present track of the Railroad Company, provided that should said Company fail to locate and commence work on its freight depot north of Clay Street within two years from the date herein, then this conveyance to said Company shall be absolutely void; and said city shall have the right to otherwise dispose of said property or any part thereof, at any time prior to such location, and commencement of work on said freight depot.

Sixth. The general or main building, repairing and machine shops of the Louisville, New Orleans & Texas Railway Company, or its successors, located and shall be permanently kept and maintained within the present limits of the City of Vicksburg, north of Fairground Street, and any failure so to do shall forfeit to the city all lands granted to said Railway Company by the City, and all lands purchased by said Railway Company for and on which to locate said shops as hereinafter in this section prescribed, and shall also annul and forfeit all the privileges and immunities granted by this contract, including the right to locate and keep its freight depot south of Clay Street. Said Railway Company, provided the same
21 can be purchased at or below the price of $30,000., shall purchase for, and on which to locate such shops, all the lands in said city north of Fairground Street and south of Depot Street and east of Levee Street or Water Street, and the right of way of the V. & M. Railroad Company and west of the present main track of said Louisville, New Orleans & Texas Railway Company, except the ground in Square one, Lower Compress Survey, occupied by Louis Peters, fronting about 100 feet on each on Water and Henry Streets, and also the land west of a line commencing on south side of William Street 60 feet east of intersection of William and Water Streets and extending to northeast corner of Peters' said lot.

Seventh. The Memphis and Vicksburg Railway Company, and the Louisville, New Orleans & Texas Railway Company do hereby surrender and release all right and claim to the $100.00- of bonds voted by said city to said Memphis & Vicksburg Railway Company in 1878.

This section shall take effect upon the delivery to the Railway Company of the bonds provided for by the next section hereof.

Eighth. Said city of Vicksburg, as soon as authorized to do so by an election to be held under the provision of said act of the Legislature of February 22nd, 1884, shall execute and issue $100,000 of its bonds in denominations of $1,000 each payable to bearer thirty (30) years after the date thereof, and having interest coupons attached, payable semi-annually at the office of the Treasurer of said city, said coupons to be for interest at the rate of four per cent. per annum for the first five years after the date of said bonds, and thereafter to be for interest at the rate of five per cent. per annum. These further conditions as to the delivery of said bonds are agreed on:

Immediately upon the issue of said bonds being authorized at said election, they are to be placed by said city in the hands of three trustees, who shall be residents of said city, one to be elected
22 by said city, one by said Railroad Company, and these two shall select the third, and in the event of death or resignation, the vacancy shall be filled in like manner. Said Trustees shall hold said bonds, and they shall deliver the same to the President of said Railway Company, or any person by him authorized in writing to receive the same whenever said Railway Company shall have actually commenced the construction of its machine shops, and shall have acquired, by purchase or condemnation, the ownership of the lands mentioned in the sixth section hereof.

But said bonds shall not be delivered by said trustees except upon the delivery to them for said city of $100,000 in the capital stock of said Louisville, New Orleans & Texas Railroad Company, or of any other company which it may have become merged into or a part of by consolidation or otherwise; and at the time of delivery said trustees shall detach and cancel or endorse credits upon sufficient coupons to cover all interest accruing thereon between the date of the bonds and the date when the Railway Company shall have become entitled to receive them under this agreement.

Ninth. In case the issue of said $100,000 of bonds of said city shall not have been duly and legally authorized by the qualified electors of said city, at an election to be held within six months from May 20th, 1885, under the law in force on that subject, this contract shall become null and void; and if the ownership of said lands specified in the sixth section hereof, cannot be acquired by said Railway Company at or within said sum of $30,000 within three months after said $100,000 of bonds shall have been placed in the hands of trustees under the eighth section hereof, then said Railway Company, may, within four months thereafter declare this contract void. In computing the periods of three months and four months, mentioned in this paragraph there shall be excluded from the computation any period or periods of time during which the trustees therein referred to shall be enjoined from delivering to the Railway Company
23 the whole, or any part of the $100,000 of bonds therein mentioned.

In witness whereof the parties have caused their corporate seal to be hereunto affixed and these presents to be signed by their appropriate officers the 11th day of August, 1885.

LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY,
By T. R. WILSON, *President.*

C. H. BOSHER, *Secretary.*

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Polls will be opened at the following places viz:
First Ward. Phoenix Engine House, Walnut Street.
Second Ward. Constitution Engine House, Main Street.
Third Ward. Lewis Stable, Washington Street.
Fourth Ward. Washington Engine House, Crawford Street.
The above election will be held between the hours of 9 A. M. and 6 P. M. of the day above named, and in the manner prescribed by law for State elections. JOHN W. POWELL, *Mayor.*

Supplemental Contract.

Providing for the Location of the Freight Depot North of Clay Street.

The following is the supplemental contract between the city of Vicksburg and the L. N. O. & T. Railway Company;

This contract entered into this the 16th day of September, A. D. 1885, between the Louisville, New Orleans and Texas Railway Company, of the one part and the Board of Mayor and Aldermen of the City of Vicksburg of the — part, witnesseth, that the said Railroad Company hereby agrees that in case the voters of said city of Vicksburg at the election to be held in said city on October 6th, A. D. 1885, shall authorize the issuance of bonds by said city to said Railroad Company, as proposed in the notice for such election, then and in that event said Railroad Company or any successor thereto, or any other company into which it may become consolidated, will, whenever it can procure by purchase or otherwise the land now owned and occupied by S. Spengler for the purposes of his saw mill and factory in said city, for a sum not exceeding $10,000 forthwith build, construct and permanently maintain its principal freight depot in said city north of Clay Street in said City. And the said Board of Mayor and Aldermen of the city of Vicksburg on their acting for said city in consideration of the aforesaid agreement on the part of the said Louisville, New Orleans and Texas Railway Company, or its successors, or any company into which it may become consolidated shall signify its readiness and purpose to contract and maintain its principal freight depot north of said Clay Street in said city, they, the said Board of Mayor and Aldermen, will convey to such Railway Company, or such successor thereto or such company into which it may have become consolidated all of the land now belonging to said city which lies west of Washington Street and east of the track of said Railway Company, and between Grove Street and Glass Bayou in said City, the deed conveying said land to said Railway Company to be so drafted and executed as to contain a provision that in the event such freight depot shall not have been constructed within two years after the execution and delivery of such deed, then said conveyance shall become inoperative and void.

In witness whereof, etc., etc.

L. N. O. & T. RAILWAY CO.,
By R. T. WILSON, *President.*

Attest—
WM. WAHL, *Secretary pro-tem.*

THE MAYOR AND ALDERMEN OF
THE CITY OF VICKSBURG,
By JOHN W. POWELL, *Mayor.*

And the foregoing has the following endorsement thereon, to-wit: Exhibit 1 to O. Bill. Filed & Ent'd Dec. 24, 1901. L. B. Moseley, Clerk, J. H. Short, D. C.

26 (Copy.)

Articles of Consolidation.

These articles of consolidation made this 24th day of October, A. D. 1892, by and between the Louisville, New Orleans & Texas Railway Company, a corporation of the States of Tennessee, Mississippi and Louisiana, party of the first part and the Yazoo & Mississippi Valley Railroad Company, a corporation of the State of Mississippi, party of the second part, Witnesseth: That under and by virtue of the Charters of the respective parties hereto and of the laws of the respective States of Tennessee, Mississippi and Louisiana in such case made and provided the said parties of the first and second parts, have mutually covenanted and agreed and do hereby mutually covenant and agree to and with each other to unite, merge, and consolidate their several capital stocks, corporate rights, franchises, immunities and privileges and properties of every kind, real, personal and mized upon the following terms and considerations, that is to say:—

Article I. Such consolidation shall be effected by uniting or merging the stock, property and franchises of the party of the first part with and into the stock, property and franchises of the said Yazoo & Mississippi Valley Railroad Company without disturbing the corporate existence of the last named Company or the formation of any new distinct corporation unless such results shall be necessary to give lefal effect to this agreement but whatever may be the legal consequence of the consolidation herein provided for this agreement is to stand and be effective.

Article II. The corporate name of the said consolidated company shall be the Yazoo & Mississippi Valley Railroad Company.

Article III. The Capital Stock of the said consolidated Company shall be Fifteen Million Dollars to be divided into One Hundred and Fifty Thousand shares of One Hundred Dollars each but the said corporation may at any time increase or diminish the amount of its capital stock according to law.

Article IV. Every holder of the stock of either of the said companies now outstanding shall be entitled to cast one vote for
27 each share of stock held by him at all stock holders' meetings of the consolidated company which vote may be cast either in person or by proxy and shall have all the rights of a stockholder of the consolidated company as fully as if the shares of the consolidated company had been issued and exchanged therefor and in case the consolidated company shall determine to issue new shares such shares shall be exchangeable at par for the new outstanding shares of each of the constituent companies and the remainder of the capital stock of the consolidated company shall be issued from time to

time and upon such terms and conditions as may be prescribed by the Board of Directors of said Company.

Article V. All and singular the rights, powers, privileges, immunities and franchises and all the railroads, real and personal estate, easements, fixtures, equipments, choses in action, and property and assets of every kind, nature or description belonging to either of the parties hereto shall be vested in and become the property of the said consolidated company without any further act, deed, conveyance or assurance being required in the premises.

Article VI. The affairs of the consolidated company shall be managed by a Board of Directors which shall consist of such a number of members, not less than five, as the company may determine from time to time, each of whom shall be a stockholder, and one of them a resident of the State of Mississippi, one of Tennessee and one of Louisiana, the members shall be divided in three equal classes as nearly as practicable, successors to serve for the term of three years shall be chosen for those who belong to the first class at the first annual meeting of the stockholders held after this consolidation shall have been effected, for those who belong to the second class at the next annual meeting and for those belonging to the third class at the next succeeding annual meeting of the stockholders, each director successively chosen shall continue in office until his successor is elected,
vacancies in the Board caused otherwise than by expiration
28 of the term for which the retiring director was chosen, may be
filled by a vote of a majority of the directo-s remaining, such appointee to continue in office until the next regular election of directors by the stockhold-rs the first Board of Directors shall be composed of the following members, divided into three classes, as follows: First Class, Stuyvesant Fish, Adolph Schriever, W. C. Craig, Charles A. Peabody, Jr.

Second Class. John W. Auchincloss, Walter Luttgen, Edward H. Harriman, J. T. Harrhan.

Third Class. S. V. R. Cruger, R. P. Neeley, R. C. Shepherd, John C. Welling.

Article VII. The Board of Directors of said consolidated company shall choose one of their number President whose term of office shall be one year or until his successor shall be chosen and qualified, they may also appoint such other officers and agents as they may deem necessary from time to time and prescribe their duties and compensation and may provide, by the by-laws to be adopted, such rules and regulations relating to the affairs and business of said company as may be necessary or proper, the said Board shall have power to appoint an executive committee of whom the President shall be one *ex-officio,* who shall possess and exercise all the powers and duties of the Board of Directors when the Board is not in session, until otherwise ordered the corporate seal of the said consolidated company shall be that of the Yazoo & Mississippi Valley Railroad Company.

Article VIII. The said consolidated company shall be and the same is hereby authorized and empowered in such manner and upon such conditions as are permitted by law to issue bonds and to secure

the same as well as all bonds heretofore issued by either of the constituent companies, or that have been heretofore or may be hereafter issued by any other railroad company by mortgage or deed of trust upon all or any of its railroads, rights, franchises and property, real and personal wherever the same may be situated and whether the same may be
29 owned by said company at the time this consolidation is effected or may be thereafter acquired and may also exercise any and every other corporate right or power now vested in or which might have been therefore lawfully exercised by either of said constituent companies.

Article IX. Until otherwise ordered the domicile of the said corporation under the laws of the State of Louisiana shall be in the Parish of Orleans and under the laws of the State of Mississippi, in the City of Jackson, in Hinds County, and the general domicile of the corporation shall be at Memphis in the State of Tennessee.

Article X. The provisions of these articles shall be obligatory upon the successors and assigns of the respective parties hereto and shall become operative and of force from and after the 25th day of October, A. D. 1892.

In Witness Whereof the parties hereto have caused their corporate names to be hereto subscribed by their respective Presidents and their corporate seals to be affixed and attested by their respective Secretaries on the day *d*n- year first above written.

LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY,
["SEAL."] By RICHARD R. WILSON, *President.*

Attest:
CHARLES H. BOSHER, *Secretary.*

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,
["SEAL."] By STUYVESANT FISH, *President.*

Attest:
ALEXANDER G. HACKSTAFF, *Secretary.*

As to the Louisville, New Orleans and Texas Railway Company.
Witness:

S. TOWNSEND.
J. F. VAN *NAME.*
GEO. H. TAYLOR.

As to the Yazoo & Mississippi Valley Railroad Company.
Witness:

W. E. RUTTEN,
CHARLES H. WERMAN, AND
GEORGE H. TAYLOR.

30 STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered that on this twenty fourth day of October A. D. 1892, before me George H. Taylor, a duly appointed Notary Public in and for the City and County of New York, State of New York, and commissioner for the State of Tennessee, in and for the State of New York, residing in said City and County of New York, personally appeared Richard T. Wilson, President of the Louisville, New Orleans and Texas Railway Company and Charles H. Bosher, Secretary of the same company, to me personally — and known to me to be such officers of said Company, who being by me severally duly sworn did depose and say that the said Richard T. Wilson was the President and the said Charles H. Bosher was the Secretary of the said Company, that they knew the corporate seal of said company, that the seal affixed to the foregoing instrument was such corporate seal that it was so affixed thereto by order of the Board of Directors of said Company and that they the said Richard T. Wilson and Charles H. Bosher signed their names thereto by like order as President and Secretary of said company respectively. In witness whereof I have hereunto set my hand and affixed my official seal this twenty-fourth day of October, A. D. 1892.

GEORGE H. TAYLOR, ["SEAL."]
["SEAL."] *Commissioner for Tennessee in New York, and Notary Public, N. Y. County.*

STATE OF NEW YORK, *City and County of New York:*

Be it remembered that on this twenty-fourth day of October, A. D. 1892, that before me George H. Taylor, a duly appointed Notary Public in and for the City and County of New York, State of New York, and Commissioner for the State of Mississippi, in and for the State of New York residing in said City and county, of New York, personally appeared Richard T. Wilson, President of the Louisville, New Orleans and Texas Railway Company, and Charles H. Bosher, Secretary of the same company, to me personally
31 known and known to me to be such officers of said company who being by me severally duly sworn did depose and say that the said Richard T. Wilson was the President and the said Charles H. Bosher was the Secretary of the said Company, that they knew the corporate seal of said company, that the seal affixed to the foregoing instrument was such corporate seal and that it was so affixed thereto by order of the Board of Directors of said Company and that they the said Richard T. Wilson and Charles H. Bosher signed their names thereto by like order as President and Secretary of said Company respectively. In Testimony whereof, I have hereunto set my hand and affixed my official seals this twenty fourth day of October, A. D. 1892.

["SEAL."] GEORGE H. TAYLOR,
["SEAL."] *Commissioner for Mississippi in New York, and Notary Public, N. Y. County.*

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered that on this twenty fourth day of October, A. D. 1892, before me George H. Taylor, a duly appointed Notary Public, in and for the City and County of New York and Commissioner for the State of Louisiana in and for the State of New York residing in said City and County, of New York, personally appeared Richard T. Wilson, President of the Louisville, New Orleans and Texas Railway Company and Charles H. Bosher, Secretary of the same Company, to me personally known and known to me to be such officers of said Company who being by me severally duly sworn did depose and say that the said Richard T. Wilson was the President and the said Charles H. Bosher was the Secretary of the said Company that they knew the corporate seal of said company that the seal affixed to the foregoing instrument was such corporate seal and that it was so affixed thereto by order of the Board of Directors of said Company and that they the said Richard T. Wilson and Charles H. Bosher signed their names thereto by like order as President and Secretary of said Company respectively.

32 In witness whereof I have hereunto set my hand and affixed my official seals this twenty-fourth day of October, A. D. 1892.

["SEAL."] GEORGE H. TAYLOR,
["SEAL."] *Commissioner for Louisiana in New York and Notary Public N. Y. County.*

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered that of this twenty-fourth day of October, A. D. 1892, before me George H. Taylor a duly appointed Notary Public in and for the City and County of New York, State of New York, and Commissioner for the State of Tennessee, in and for the State of New York residing in said City and County of New York, personally appeared Stuyvesant Fish, President of the Yazoo & Mississippi Valley Railroad Company and Alexander G. Hackstaff, Secretary of the same company to me personally known and known to me to be such officers of said company who being by me severally duly sworn did depose and say that he the said Stuyvesant Fish was the President and that he the said Alexander G. Hackstaff was the Secretary of said Company that they knew the corporate seal of said Company that the seal affixed to the foregoing instrument was such corporate seal and that it was so affixed thereby by order of the Board of Directors of said Company and that they the said Stuyvesant Fish and Alexander G. Hackstaff signed their names thereto by the like order as President and Secretary of said Company respectively. In witness whereof I have hereunto set my hand and affixed my official seals this twenty fourth day of October, A. D. 1892.

["SEAL."] GEORGE H. TAYLOR,
Commissioner for Tennessee in New York
[SEAL.] *and Notary Public, N. Y. County.*

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered that on the twenty fourth day of October, A. D. 1892, before me George H. Taylor, a duly appointed Notary
33 Public in and for the City and County of New York, State of New York and Commissioner for the State of Mississippi in and for the State of New York residing in said City and County of New York personally appeared Stuyvesant Fish, President of the Yazoo & Mississippi Valley Railroad Company and Alexander G. Hackstaff, Secretary of the same company to me personally known and known to me to be such officers of said company who being by me severally duly sworn did depose and say that he the said Stuyvesant Fish was the President and that he the said Alexander G. Hackstaff was the Secretary of said Company that they knew the corporate seal of said company that the corporate seal affixed to the foregoing instrument was such corporate seal and that it was so affixed to the foregoing instrument by the order of the Board of Directors of said company and that they the said Stuyvesant Fish and Alexander G. Hackstaff signed their names thereto by the like order as President and Secretary of said Company respectively.

In witness whereof I have hereunto set my hand and affixed my official seals this twenty fourth day of October, A. D. 1892.

["SEAL."] GEORGE H. TAYLOR,
["SEAL."] *Commissioner for Mississippi in New York and Notary Public, N. Y. County.*

STATE OF NEW YORK, *City and County of New York, ss:*

Be it remembered that on the twenty fourth day of October, A. D. 1892, before me George H. Taylor, a duly appointed Notary Public in and for the City and County of New York, State of New York, and Commissioner for the State of Louisiana in and for the State of New York residing in said City and County, of New York, personally appeared Stuyvesant Fish President of the Yazoo & Mississippi Valley Railroad Company and Alexander G. Hackstaff, Secretary of the same company, to me personally known and known to me to be such officers of said company who being by me severally duly sworn did depose and say that he Stuyvesant Fish was the President and that he the said Alexander G. Hackstaff was the Secretary
34 of the said Company that they knew the corporate seal of said Company that the seal affixed to the foregoing instrument was such corporate seal and *that the seal affixed to the foregoing instrument was such corporate seal and* that it was so affixed thereto by order of the Board of Directors of said Company and that they the said Stuyvesant Fish and Alexander G. Hackstaff signed their names thereto by the like order as President and Secretary of said Company respectively. In witness whereof I have hereunto set my hand and affixed my seal- this twenty-fourth day of October, A. D. 1892.

["SEAL."] GEORGE H. TAYLOR,
["SEAL."] *Commissioner for Louisana in New York and Notary Public, N. Y. County.*

OFFICE OF SECRETARY OF STATE,
JACKSON, MISS., *November 4th,* 1898.

I, J. L. Power, Secretary of State do certify that the foregoing and annexed articles of consolidation of the Louisville, New Orleans and Texas Railway Company and the Yazoo & Mississippi Valley Railroad Company are true and correct copies of the original filed in this office on the 27th day of October, 1892.

Given under my hand and the great Seal of the State of Mississippi, this 4th day of November, 1898.

["SEAL."] J. L. POWER,
Secretary of State.

35 STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, Clerk of the Chancery Court of said County, hereby certify that the foregoing instrument of writing was filed in my office for record on the 19th day of November, 1898 at 11 o'clock A. M. and duly recorded in Deed Book No. 89 page 3 *et seq.*

Witness, my hand and seal of said Court this 22nd day of November, 1898.

["SEAL."] J. D. LAUGHLIN, *Clerk.*
J. L. HYLAND, *D. C.*

STATE OF MISSISSIPPI, *Warren County, ss:*

I, J. D. Laughlin, Clerk of the Chancery Court of said County, hereby certify that the foregoing eight pages and nine lines contains a true and correct copy of the Articles of Consolidation between the Louisville, New Orleans and Texas Railway Company and the Yazoo & Mississippi Valley Railroad Company as the same appears of record and on file in my said office in Deed Book No. 89, page 3 *et seq.*

Witness my hand and seal of said court, this 28th day of December, 1905.

["SEAL."] J. D. LAUGHLIN, *Clerk.*
J. E. GORMAN, *D. C.*

And the foregoing has the following endorsement thereon, to-wit: Exhibit 2 to Bill Filed & Ent'd Dec. 24 1901 L. B. Moseley, Clerk, J. H. Short, D. C.

36 Copy.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

The President of the United States to the Marshal of the Southern District of Mississippi:

You are hereby commanded. Without delay to summon the Board of Mayor and Aldremen of the City of Vicksburg, a municipal corporation od the State of Mississippi, citizen of the State of

Mississippi, to appear before the Cir-uit Court of the United States for the Western Division of the Southern District of Mississippi at the City of Vicksburg to be holden in the Court Room thereof in the City of Vicksburg on the first Monday in January next to answer a bill in Equity exhibited against it by the Yazoo & Mississippi Valley Railroad Company, citizen of the State of Mississippi and unless it shall — its appearance therein; in the Clerk's Office aforesaid on or before the time specified above the said Bill will be taken for confessed and have then there this writ and how you have executed the same.

Witness the Honorable M. W. Fuller, Chief Justice of the Supreme Court of the United Statea and the seal of our said Circuit Court this the 24th day of December, 1901.

L. B. MOSELEY, *Clerk.*
["SEAL."] C. D. BANKS, *D. C.*

The defendant is hereby notified that it is required to enter its appearance in the Clerk's office of the United States Circuit Court on or before the first Monday of January 1901 otherwise the Bill may be taken *Pro confesso.*

L. B. MOSELEY, *Clerk.*
C. D. BANKS, *D. C.*

37 *Injunction Writ.*

UNITED STATES OF AMERICA *for the Western Division of the Southern District of Mississippi:*

To the Board of Mayor and Aldermen of the City of Vicksburg, a municipal corporation of the State of Mississippi, and R. M. Kelly, City Assessor and Collector, of said City, your Attorneys, Counsellors, Solicitors and Agents, Greeting:

Whereas a bill of complaint has been lately exhibited in the United States Circuit Court for said Division of the said District by the Yazoo & Mississippi Valley Railroad Company to be relieved touching the matters in the said bill contained, and praying for an injunction restraining you as hereinafter set forth, and obtained the fiat of the Honorable H. C. Niles, United States District Judge, granting said injunction, and bond and security having been given us as required by said fiat and statute:

We therefore strictly enjoin and command you under penalty of contempt of Court that you absolutely refrain from collecting or attempting to collect any taxes on the property of the said Yazoo & Mississippi Valley Railroad Company situated within the limits of the municipality of the City of Vicksburg, Mississippi, or of selling said property of said Railroad Company under distress warrant or taking any steps or proceedings whatever for the collection or recovery of such taxes, and from any further proceedings against the said complainant touching any of the matters in said bill contained until the United States Circuit Court shall make another order to the contrary hereof.

Witness the Honorable M. W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the said Circuit Court this the 24th day of December A. D. 1901.

L. B. MOSELEY, *Clerk.*
C. E. BANKS, *D. C.*

To the United States Marshall to execute and return.

L. B. MOSELEY, *Clerk.*
C. E. BANKS, *D. C.*

And the foregoing has the following endorsement thereon, to-wit: Executed, Writ of Injunction, Filed & Ent'd Dec. 24 1901 L. B. Moseley Clerk J. H. Short, D. C.

38 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Demurrer.

The demurrer of the Mayor and Aldermen of the City of Vicksburg, a municipal corporation, the defendant above named, to *to* bill of complaint filed herein against them.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged:

(*a*) And to so much and such part of the bill as is contained in Paragraph III thereof:

(*b*) As to so much and such part of said bill as is contained in Paragraph IV thereof;

(*c*) As to so much and such part of said bill as is contained in Paragraph V thereof:

(*d*) As to so much and such part of said bill as is contained in Paragraph VII thereof:

(*e*) As to so much and such part of said bill as is contained in Paragraph VIII thereof:

demurs thereto, and for cause of demurrer shows as follows:

I. To Paragraph III for the following reasons:

1. Because the Legislature of the State of Mississippi had no power to grant an exemption, or to authorize a grant of exemption, from municipal taxation to any of the railroad companies mentioned in the bill under the Constitution of Mississippi of 1869, which was in force at the time the Act of 1884, referred to in said paragraph, was enacted, and any exemption or attempted exemption under said act was void.

39 2. Because the Act of 1884, upon which the claim of exemption from municipal taxation is based, was unconstitutional because in conflict with Article 12, Sec. 13 of the Constitution of Mississippi of 1869 then in force, which provided that the property of all corporations for pecuniary profit should be subject to taxation the same as that of individuals.

3. Because the Act of the Legislature of 1884 was unconstitutional in that it was in conflict with Section 20 of the Constitution of Mississippi of 1869, then in force, providing that taxation should be equal and uniform throughout the State and that all property should be taxed according to its value, to be ascertain- as directed by law.

4. Because the Legislature of the State of Mississippi, under the Constitution of 1869, then in force, had no power to grant an irrepealable exemption from municipal taxation, or to authorize the City of Vicksburg to grant such an exemption.

II. To Paragraph IV for the following reasons:

1. Because the contract referred to in said paragraph was void because entered into under the Act of the Legislature of the State of Mississippi Referred to in *siad* bill, which act was unconstitutional and void because in conflict with Art. 12, Sec. 13 and Sec. 20 of the Constitution of Mississippi of 1869 in force at the time said contract was made.

2. Because the Legislature of the State of Mississippi had no power, under the Constitution of 1869, to grant to the railroad companies mentioned in the bill, or any or either of them, exemption from municipal taxation, and had no power to authorize the municipality of Vicksburg, by ordinance, agreement or otherwise, to grant such an exemption, and any exemption so made, or attempted, is void.

3. Because the Legislature of the State of Mississippi had no power to grant itself, and no power to authorize the City of Vicksburg to grant an irrepealable exemption from municipal taxation, to said railroad companies, or any or either of them and any grant or attempt to grant an irrepealable exemption is void.

40 III. To Paragraph V of said bill for the following reasons:

1. Because said paragraph shows no equity on its face.

2. Because said paragraph shows no right to the relief prayed for or to any relief whatever.

3. Because said paragraph shows that the lands bought and the houses built and expenses incurred, etc., etc., as set out in said paragraph, were bought, built and incurred by the Railroad Company under a claim of exemption from municipal taxation based upon a void contract entered into under a void act of the Legislature of the State of Mississippi.

IV. To Paragraph VII of the bill for the following reasons:

1. Because it appears in and by said paragraph that no exemption from municipal taxation was ever granted to the complainant Railroad Company in person by the Legislature of the State of Mississippi or by the City of Vicksburg.

2. Because it appears in and by said paragraph that the complainant acquired its right to exemption from municipal taxation by virtue of its consolidation with the Louisville, New Orleans & Texas Railway Company, which exemption from municipal taxation, if it ever existed, had been repealed by the Legislature of the State of Mississippi.

3. Because it appears that any exemption from municipal taxation which existed prior to the enactment of the Constitution of Mississippi of 1890 was repealed by Section 180 of said instrument and long before the consolidation of the complainant company with the Louisville, New Orleans & Texas Railway Company on October 24th. 1892.

4. Because any exemption from municipal taxation in any of the charters of any of the railroad companies referred to in said bill and by the Act of 1884 above referred to was repealed by Section 180 of the Constitution of Mississippi of 1890, and before the con-
41 solidation of the complainant company with the Louisville, New Orleans & Texas Railway Company.

5. Because the right of exemption from municipal taxation did not exist in the Louisville, New Orleans & Texas Railway Company at the time of its consolidation with the complainant company, such exemption, if it had any, having been repealed by the Constitution of Mississippi of 1890 Sec. 180, and the complainant did not acquire any right of exemption from municipal taxation by virtue of its consolidation with said Company.

6. Because it is shown in and by said paragraph and the articles of consolidation filed with the bill as Exhibit 2 thereto, and referred to in said paragraph, that by said consolidation, the complainant, a new, distinct and independent corporation, was formed and created, and that it did not by virtue of the consolidation with the Louisville, New Orleans & Texas Railway Company acquire the right of exemption from municipal taxation, and could not acquire such exemption.

7. Because, by consolidation, the Louisville, New Orleans & Texas Railway Company as alleged in said Paragraph 7, the complainant thereby lost the right to exemption from municipal taxation, if any such right ever existed.

8. Because the complainant does not show in and by said paragraph that it is entitled to exemption from municipal taxation.

9. Because the complainant does not show in and by said paragraph that being a new, distinct and independent corporation, it is entitled to exemption from municipal taxation.

V. To Paragraph VIII for the following reasons:

1. Because said paragraph shows no equity on its face.

2. Because said paragraph avers no facts which justify the relief prayed for or any relief.

3. Because the election and other acts and things had and done, as stated in said paragraph, were all had and done by the railroad companies upon a contract, based upon an unconstitutional act of the

Legislature of the State of Mississippi, and the agreement of exemption was also void.

42 Wherefore, and for divers other causes of demurrer appearing in the said bill, these defendants demur thereto and humbly demand the judgment of the court, whether they shall be compelled to make any further or other answer to such parts of the said bill as, is so demurred to as aforesaid, and prays to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

DABNEY & McCABE,
Solicitors for Respondent.

43 And the defendants demur to the bill as a whole, for the following reasons:—

1. Because there is no equity upon the face of the bill.
2. Because the facts alleged in said bill do not warrant the Court in granting the relief prayed for or any relief.
3. Because the facts alleged in the bill do not entitle the complainant to the relief sought or any relief
4. And for all of the reasons assigned in the foregoing special demurrer.

DABNEY & McCABE,
Solicitors for Defendants.

44 DISTRICT OF THE WESTERN DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI. *County of Warren:*

B. W. Griffith, Mayor of the City of Vicksburg, makes solemn oath and says that he is, as Mayor of the City of Vicksburg, one of the above named defendants, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

B. W. GRIFFITH.

Subscribed and sworn to before me this the 30th day of December, 1905.

L. B. MOSELEY, *Clerk.*
J. H. SHORT, *D. C.*

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

H. C. McCABE,
City Att'y of Vicksburg.

And the foregoing has the following endorsement thereon, to-wit: Equity 86 The Y. & M. V. R. R. Co. *vs.* The Mayor and Aldermen of the City of Vicksburg. Demurrer. Filed & Ent'd Dec. 30 1905 L. B. Moseley Clerk, J. H. Short, D. C. Dabney & McCave Attorneys at Law Vicksburg, Miss.

45 No. 86.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This cause coming on for hearing at the January Term of this Court upon the defendant's demurrer to the complainant's bill of complaint, the same was argued by counsel for the complainant and defendant, but the Court not being then advised as to what decree should be entered in the premises, said cause was taken under advisement until this present term of Court; the Court having duly considered said demurrer and being now fully advised in the premises, is of the opinion that said demurrer is good and should be sustained.

It is, therefore, now considered by the Court, and it is so ordered and adjudged, that the defendant's demurrer to the complainant's bill be and the same is hereby sustained and the injunction heretofore granted herein be and the same is hereby dissolved, and the original bill filed herein be and the same is dismissed at the cost of the complainant.

It is further ordered that the defendants, the Mayor and Aldermen of the City of Vicksburg do have and recover of and from the Yazoo & Mississippi Valley Railroad Company, the complainant herein, and the Delta Trust & Banking Company, the surety on its injunction bond, the sum of $3640.00, being the amount of taxes enjoined, and the further sum of $364.00, being 10% damages upon the amount of said taxes, as provided for by section 484 of the Revised Code of 1892 of Mississippi, for which let execution issue, and this decree shall be a lien from this time upon the property of the complainant company; and all the property on which the taxes enjoined were assessed shall remain bound by the lien for the taxes and damages hereinbefore found to be *to be* due.

Ordered, adjudged and decreed this the 3rd day of July, 1906.

H. C. NILES, *Judge.*

46 And the foregoing has the following endorsement thereon, to-wit: 86 Eq. Y. & M. V. R. R. Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Decree. Filed & Ent'd M B p 195 Jul. 3 1906 L. B. Moseley Clerk, J. H. Short D. C. Dabney & McCabe, Attorneys at Law Vicksburg, Miss.

47 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

No. 86.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
versus
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

The above named complainant conceiving itself aggrieved by the decree made and entered on the 3rd. day of July, 1906, in the above styled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the Assignment of Errors, which is filed herewith, and prays that this appeal be allowed, and that a transcript of the record, proceedings and papers upon which said order was made duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 13 day of August, A. D. 1906.

SMITH, HIRSH & LANDAU,
Solicitors for Complainant.

The foregoing prayer of appeal is all-wed, dated August 13, 1906.

H. C. NILES,
Circuit Judge.

48 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
versus
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

The plaintiff prays an appeal from the final decree of this Court to the Supreme Court of the United States, and assigns for error:

(1) That the Court erred in sustaining the demurrer to the bill and dismissing the bill.

(2) That the Court erred in granting the motion to dissolve the temporary injunction.

The plaintiff prays that the order dissolving the temporary injunction may be sustained pending the appeal.

SMITH, HIRSH & LANDAU,
Solicitors for Compl't.

49 UNITED STATES OF AMERICA, *ss:*

To the Mayor and Aldermen of the City of Vicksburg:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within the next thirty days from the date hereof, pursuant to an appeal in equity

States in and for the Western Division of the Southern District of Mississippi, at Vicksburg, Mississippi, to the Supreme Court of the United States, at Washington, in the District of Columbia, wherein cause No. 86 taken and allowed from the Circuit Court of the United the Yazoo & Mississippi Valley Railroad Company is appellant and you are the appellee, to show cause, if any there be, why the judgment or decree rendered against the said appellant, as in its petition for appeal, is mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf.

Witness the Honorable Henry C. Niles one of the Judges of the said Circuit Court of the United States this the 13 day of August, 1906.

H. C. NILES,
Judge of the Circuit Court of the U. S. in and for the Southern District of Miss.

VICKSBURG, MISS., *Aug.* 14, 1906.

Service of the foregoing citation is hereby accepted.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG,
GEO. ANDERSON, *City Attorney.*

50 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Official Bond.

Know all men by these presents, that the Yazoo & Mississippi Valley Railroad Company, as principal and the Peoples Savings Bank and Loan Company, as surety, both of said obligors being corporation- under the laws of the State of Mississippi, are held and firmly bound unto the Mayor & Aldermen of the City of Vicksburg in the penal sum of Five Thousand Dollars, to be paid to the said Mayor & & Aldermen of the City of Vicksburg; to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, administrators and assigns firmly by these presents, this 3rd day of August, A. D. 1906.

Whereas, the above named Yazoo & Mississippi Valley Railroad Company has prosecuted an appeal to the Supreme Court of the United States to reverse a decree or judgment rendered in a certain cause wherein the said appellant was complainant, and the said Mayor & Aldermen of the City of Vicksburg were defendants, and numbered 86 on the Equity Docket of said Circuit Court of the United States for the Western Division of the Southern District of Mississippi on the 3rd day of July 1906, in *in* favor of the said

Mayor & Aldermen of the City of Vicksburg and against the said appellant.

Now, therefore, the condition of this obligation is such that if the above named appellant should prosecute an appeal to effect and answer all cause and damage, or if it should fail good to make its plea then this obligation shall be void; otherwise to remain in full force and virtue.

In testimony whereof, the said Yazoo & Mississippi Valley Railroad Company has caused this bond to be signed by Smith, Hirsh & Landau, its attorneys and solicitors and the said People's Savings Bank & Loan Company has caused this bond to be signed by W. S. Jones its President and its corporate seal to be hereto affixed, on this the day and year above written.

YAZOO & MISSISSIPPI VALLEY RAILROAD CO.,
By SMITH, HIRSH & LANDAU.
PEOPLE'S SAVINGS BANK & LOAN COMPANY,
By W. S. JONES, *President.* ["SEAL."]

Approved Aug. 13th, 1906.
H. C. NILES, *Judge.*

51 And the foregoing has the following endorsement thereon towit: Equity 86. The Y. & M. V. R. R. Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Appeal Bond. Filed & Ent'd Aug. 13 1906 L. B. Moseley Clerk J. H. Short D. C. Smith Hirsh & Landau.

52 *Clerk's Certificate.*

I, L. B. Moseley, Clerk of the Circuit Court of the United States in the Fifth Circuit and Western Division of the Southern District of Mississippi, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, assignments of error and all the proceedings had in Equity Cause No. 86, wherein the Yazoo & Mississippi Valley Railroad is Complainant and the Mayor & Aldermen of Vicksburg is Defendant, as fully as the same remains on file and of record in my office at Vicksburg, Mississippi.

Witness my official Signature and the Seal of said Court, at Vicksburg in said Division of said District, on the 14 day of August, A. D. 1906.

[Seal U. S. Circuit Court Southern District of Mississippi.]

L. B. MOSELEY, *Clerk.*
J. H. SHORT, *Deputy Clerk.*

Endorsed on cover: File No. 20361. S. Mississippi C. C. U. S. Term No. 97. The Yazoo & Mississippi Valley Railroad Company, appellant, *vs.* The Mayor and Aldermen of the City of Vicksburg. Filed September 8, 1906. File No. 20361.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1907.

NO. 97

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,
Appellant,

vs.

MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG,
Appellee.

On appeal from the Circuit Court of the United States for the Southern District of Mississippi.

ABSTRACT AND BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This was a bill in equity filed by appellant in the Circuit Court of the United States, in order to enjoin the City of Vicksburg from collecting municipal taxes for the year 1901 on the railroad property located within the limits of the city.

The controlling questions are (1) the constitution-

ality of Chapter 586 of the Laws of Mississippi of 1884 (See Laws 1884, page 917), in which statute it was provided that the city might contract with the railroad company relative to the location and maintenance at such city of the machine shops, upon such conditions and with such exemptions from city taxation, etc., as might be agreed upon; and (2) the effect upon the contract of exemption made under such statute, of the consolidation of October, 1892, by which the Yazoo & Mississippi Valley Railroad Company was constituted.

In brief, and in a general way, the question is whether this case is controlled by the decision of this court rendered in *Yazoo & Mississippi Valley Railroad Company* v. *Wirt Adams,* 180 U. S., 1.

The bill of injunction filed by appellee was demurred to; the demurrer was sustained by the Circuit Court, and the Railway Company took its appeal direct to this court.

In brief, the bill alleged the following facts: that prior to the year 1882 the Memphis & Vicksburg Railway Company had been incorporated for the purpose of building a railroad from the County of Warren to the Tennessee line; and the Mississippi Valley & Ship Island Railway Company had been incorporated in order to build a railroad from the City of Vicksburg to a point on the Gulf coast; that some little work was done by each company prior to the year 1882; that in the year 1882 the New Orleans, Baton Rouge, Vicksburg & Memphis Railway Company was incorporated, and in that year plans were so changed as to make provision for a continuance of the line from New Orleans,

via Vicksburg, to Memphis, under two of the three Mississippi charters foregoing, and a Tennessee and a Louisiana charter. Under this new scheme, from the year 1882 the work of construction was vigorously prosecuted, and finally completed.

In this state of affairs, the act of exemption in controversy was passed, being approved February 22, 1884. It provided as follows:

> "That the City of Vicksburg, through its Board of Mayor and Aldermen, and the Memphis & Vicksburg Railroad Company, or such other railroad as said Memphis & Vicksburg Railroad Company may hereafter become merged into, or a part of, by consolidation or otherwise, be and are hereby respectively authorized and empowered to enter into such contract or contracts with each other relative to the location and maintaining at such city of the machine shops of said Railroad Company, as they may mutually agree upon, together with such limitation, conditions, privileges, immunities, exemptions from city taxation, settlement of all claims * * * and such other things as may be decided and mutually agreed on between said City of Vicksburg and said Railroad Company," etc.

The bill further alleged that in pursuance of the authority granted by said act a contract was made in 1884 with the Louisville, New Orleans & Texas Railway Company, a consolidated company one of whose constituents was the Memphis & Vicksburg Railway Company aforesaid, by which contract the City of Vicksburg agreed to and did exempt from all municipal taxation for a period of ninety-nine years all of the property used, or which shall or may be used, for tracks, switches, depots, machine shops, rolling stock, and any

and all railroad purposes of the said Louisville, New Orleans & Texas Railway Company, or its successors, or of any company into which it might at any time be merged by consolidation or otherwise; but that notwithstanding such contract, and notwithstanding the acquiescence of the city therein, and its observance of the same up to the year 1901, the authorities of the city did in the year 1901 assess for taxation the property so exempted, and did propose to collect by distress or other legal process the taxes so assessed.

Wherefore, the injunction was sued out in this cause.

Assignment of Errors.

The plaintiff prays an appeal from the final decree of this court to the Supreme Court of the United States, and assigns for errors:

(1) That the court erred in sustaining the demurrer to the bill and dismissing the bill.

(2) That the court erred in granting the motion to dissolve the temporary injunction.

The plaintiff prays that the order dissolving the temporary injunction may be sustained pending the appeal.

Smith, Hirsch & Landau,
Solicitors for Complainant.

ARGUMENT.

The Equity of the Bill.

That a bill in equity will lie to enjoin the collection of a tax unlawfully assessed against property which is exempt from taxation, is well settled.

2 Cooley on Taxation (Edit. 1903), p. 1444.

Railroad Company v. *Adams,* 180 U. S., p. 28.

The Contract of Exemption.

The bill alleged that pursuant to the authority conferred by the act of 1884, a contract was made in 1884 between the railroad company and the city, of which sections two and six, in so far as material, are as follows:

> "Second. Said city agrees to and does hereby exempt from all municipal taxation for a period of ninety-nine years all of the property used or which shall or may be used for tracks, switches, depots, machine shops, rolling stock, and any and all other railway purposes (except only buildings for residences or stores) of the Louisville, New Orleans & Texas Railway Company or of its successors, or of any company into which it may from time to time be merged by consolidation or otherwise, or of any company which upon foreclosure or reorganization, may become the owners of its line of railroad within said city.
>
> Sixth. The general or main building, repairing and machine shops of the Louisville, New Orleans & Texas Railway Company, or its successors, located and shall be permanently kept and

> maintained within the present limits of the City of Vicksburg, north of Fairground street, and any failure so to do shall forfeit to the city all lands granted to said railway company by the city, and all lands purchased by said railway company for and on which to locate said shops as hereinafter in this section prescribed, and shall also annul and forfeit all the privileges and immunities granted by this contract, including the right to locate and keep its freight depot south of Clay street," etc.

The property against which the tax is now assessed, was acquired and constructed by the railway company within the city limits, under that contract, and in accordance with its provisions.

It will be observed that the decision of this court in *Railroad Co.* v. *Adams,* 180 U. S., 1, was handed down on January 7, 1901; and then came, later in that year, and after sixteen years of observance of the contract, the assessment complained of.

The demurrer admit these averments of fact, but seek to avoid the contract on the ground that the act of 1884 was in conflict with Article 12, Secs. 13 and 20, of the Constitution of Mississippi, adopted in 1869, which provisions are as follows:

> "Sec. 13. The property of all corporations for pecuniary profits shall be subject to taxation, the same as that of individuals.
>
> "Sec. 20. Taxation shall be equal and uniform throughout the state. All property shall be taxed in proportion to its value, to be ascertained as directed by law."

We now submit that the provision of the act of 1884 is materially different from the railroad charter provision which formed the subject of controversy in *Railroad Company* v. *Adams,* 77 Miss., 194, 180 U. S., 1. It

does not fall within Section 13, Article 12 above nor within the decision of those cases, for the reason that it does not undertake to create an exemption such as is by them condemned.

The effect of the act of 1884, and its only effect as to this, is to empower the City of Vicksburg to contract for the location of the machine shops within its limits, and in and by such contract, if the municipal authorities should deem it to the interest of the city, to extend as a consideration, an exemption from municipal taxation. But such exemption, when extended, was to be and could only be, the act of the city, and not the act of the legislature. Such step, it was manifestly designed, should be taken by the city, after duly weighing the business considerations pro and con, and as a measure looking toward the development and upbuilding of the city's financial interest and general values. The contract is mutual and continuing. The exemption is conditioned upon and only exists so long as the shops are maintained upon the property.

It was not by the legislature designed to be, and it was not, the grant of an exemption to the railroad company, but it was the grant of a certain power to the city. In fact nothing was thereby granted to the company; because as to this, the company itself, and for its own part. had already the power to make such a contract.

This statute was therefore very different from Sec. 21 of the charter of the Mobile & Northwestern Company (180 U. S., p. 10), which was a direct legislative grant to a designated railway company, in its special private charter, of a privilege, held to be a "thinly dis-

guised exemption," made without any reference to or determination of, the compensations to be derived.

Such a power as was conferred on the city was not repugnant to Sec. 13, Art. 12, even as applied by the recent decisions on that provision. It was not such a matter as came within its purview. That provision does not declare that corporate property shall be taxed, absolutely and at all events. This is clearly shown in *Adams* v. *Tombigbee Mills,* 78 Miss., 676,—a case later than *Adams* v. *Railroad Company,* 77 Miss., *supra.*

In the *Tombigbee Mills* case, the Supreme Court of Mississippi analyzed and reviewed its own decision in the latter case. It selected from the opinion in the previous case, and quoted, certain passages which embodied the gist of its holding; the effect of all being to declare that exemptions were not prohibited, but that discriminatory, exclusive, and irreparable exemptions, granted by special charter, were prohibited. See page 692.

Also note pages 686 and 687, where, quoting from the former opinion, it is said that:

> "So Section 13, of Article 12, was put in the organic law of the land, beyond the reach of legislative control, 'for the express purpose of formulating great line of public policy prohibiting any difference in the exercise of the taxing power between the property of individuals and the property of private corporations for pecuniary profit.' The court, in *Mississippi Mills* v. *Cook,* 56 Miss., at pages 51, 52, looked too narrowly at the mere word 'subject.' It should have taken broadly the whole section into view and deduced from all its terms the meaning of the provision. * * * We prefer now to distinctly align ourselves with the Supreme Court of the United States on this important ques-

> tion, and overrule the *Mississippi Mills* v. *Cook* in so far as it held that the property of private corporations for pecuniary profit was not, by constitution 1869, article 12, section 13, 20, expressly directed to be taxed just as the property of individuals."

If we have made ourselves clear, the court will see that our contention is, not that the legislature can empower a city to do what the legislature is itself disabled by the constitution to do; but it is that Sec. 13, Arts. 12 and 20, were not intended to, and do not, forbid the granting of an exemption for a limited term of years, in the manner, under the conditions, and on the considerations, existing in this instance. It is a question of the scope of the constitutional mandate.

In the *Tombigbee Mills* case, *supra* (78 Miss., 676), the act of March 9, 1882, was declared to be constitutional and still in force. The statute itself is set forth in the opinion of the court (page 684). It provided that:

> "To encourage the introduction of factories in this state, the machinery used for the manufacture of cotton or woolen goods, yarns of fabrics, composed of these or other materials, or for the making of all kinds of machinery or implements of husbandry, or all other things, or articles not prohibited by law; the manufactured goods or the material used therefor, the buildings in which the machinery is located and grounds upon which situated or which may be within the necessary enclosure around such buildings, also all warehouses and other storehouses used exclusively by the company in its business and adjacent to the factory and its enclosure, and also the offices of the officers and employes adjacent to and located on the grounds of such factory, and used by them alone (but shall not apply to any railroad shops *or* machine work

> *which* are the property of railways), and no other property shall be, and is hereby declared to be, exempt from all taxation, state, county and municipal, for the period of six years from the time such factory is completed and in operation."

It will now be observed that when the act of 1884, whose constitutionality is now challenged, was enacted, this act of 1882 (declared, as above, to be constitutional), was in force and had been for two years, being recent legislation. By its very comprehensive general terms, the machinery used for the manufacture of *any* things not prohibited by law, as also the raw material and the things manufactured, the buildings and grounds, including warehouses, storehouses and offices, were all exempted from all form of taxes for a limited time. To this, there was one exception made; that is, the shops and machine works of railroads. Notwithstanding this discrimination against railroad factories, the act was still held to be constitutional, on the ground that the legislature had the right to select the kinds of property exempted, provided no discrimination was made between corporate property and property of natural persons.

This act of 1882 was obviously the cause of the enactment of Section 1, of the Act of 1884. There is an obvious, logical and historical correlation between them. The Act of 1884, Section 1, cannot be properly valued nor understood without placing it in its proper setting of the act of 1882. The intention and effect of it was, not to undo, directly and by the terms of the act, the discrimination made against railroad shops and factories by the Act of 1882, but to empower the city, if it should deem it for its own interest so to do,

to allow and contract for an exemption from municipal taxes. This the city did; granting an exemption for ninety-nine years. Even then, even when that contract was made, the railroad shops and related property did not occupy the attitude of an invidious favoritism in the matter of taxes. They were not even made equal; for all other manufacturing products were exempted by the Act of 1882 from state, county and municipal taxes, while the railroad taxes and property connected were exempted from municipal taxes alone.

Granting that the Constitution of 1869 did not forbid exemptions, and the Mississippi Supreme Court holds that it did not; granting that the Act of 1882 was constitutional, and the same court holds that it was; then, we submit, Section 1 of the Act of 1884 and the contract made under it by the city, violated no provision of the Constitution. It merely dealt with the same subject-matter of the Act of 1882, and was only a conditional release, in a measure, of the discriminatory exception contained in that act. True, the contract made was for ninety-nine years, but it was still limited in time, and was not either by its own terms or by those of the statute made either perpetual or irreparable.

HAS THE EXEMPTION BEEN REPEALED OR OTHERWISE LOST?

It is contended by the demurrers that the exemption so contracted for has been repealed by the legislature (statutes not indicated); also by Section 180 of the Constitution of 1890.

The demurrers do not claim a repeal by Section 181 of the Constitution of 1890; presumably because

that section on its face expressly declared that "Exemptions from taxation to which corporations are legally entitled at the adoption of this Constitution shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature."

Nor do such demurrers claim a repeal by Section 182 of the Constitution of 1890; presumably because (1) the prohibition of this statute is obviously prospective altogether, and (2) because of the saving provisions of Section 181 quoted above.

The demurrers do not cite the statute relied on as effecting a repeal; but, probably the reliance is amongst others at least, on Section 3744 of the Code of 1892. Passing by, for the present, any questions arising under the federal law, we submit that this section could not effect such a repeal (apart from the effect of the consolidation of 1892, as to which later), because of Section 181 of the Constitution quoted above. That section expressly declared that existing exemptions should "remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature." It seems clear that the clause "unless sooner repealed by the legislature," has reference only to those exemptions which were granted "by general laws"; and that the Constitution did not undertake to recognize as existent in the legislature, or to invest that body with, the power to repeal a charter or other contract exemption based on a consideration.

If the Act of 1886, Chapter 2, or any similar act, which was passed prior to the consolidation of 1892, be relied on as a repeal, the answer is clear.

The contract of 1884 was validly made under the Act of 1884, a constitutional law; and it therefore was beyond the power of the state to repeal, by either statute or constitution. A proposition so elementary needs no discussion. The recognition of it pervaded the entire litigation in the Mississippi tax cases reported in 77 Miss., and 180 U. S., the entire controversy in them being either (1) that the exemption was void *ab initio* because of the constitution of 1869, or else (2) that it was lost by the consolidation of 1892, which created a new company, subject in all things to the Constitution of 1890 and the Code of 1892; in short, an abandonment voluntarily made.

We now, therefore, pass to the effect in this instance of that same consolidation.

THE CONSOLIDATION OF 1892.

It is apparently to this question that the demurrers look in their reliance, amongst other things, on Sec. 180 of the Constitution of 1890.

Grant the rule established by this court in *Pearsall* v. *Railway*, 161 U. S., 646, and in *Railroad Company* v. *Kentucky*, 161 U. S., 677, that when by a railway charter a general power of consolidation is given, such power is a mere privilege, and so long as it has remained unexecuted, and so long as rights have not vested under it, that power may be modified or repealed—yet this case does not come under the opera-

tion of that rule. Here, the proviso to the rule, so carefully reserved by this court in its opinion in both of those cases, obtains and controls.

The Act of 1884 under which this contract of exemption was made, expressly provides that such contract might be made with 'the Memphis and Vicksburg Railroad Company or such other railroad as said Memphis and Vicksburg Railrad Company may hereafter become merged into or a part of by consolidation or otherwise."

And the contract itself expressly provided that such exemption was granted of the railway property "of the Louisville, New Orleans & Texas Railway Company or of its successors, or of any company into which it may from time to time be merged by consolidation or otherwise," etc.

The power of the legislature at that time (1884) to authorize a contract which shall inure to any successor, by consolidation or otherwise, cannot be challenged. The Constitution of 1890 was not adopted until six years later. The Constitution of 1869 was then in force, and there is no provision in it on the subject of consolidations, and no restrictions germane to this point.

The *contract* was made, under the *law;* and whatever might be the losses of the railroad companies, in a general way, by the consolidation of 1892 under the Constitution of 1890, this particular exemption was not lost. It became, in 1884, a concrete, vested contract right, acquired on and for a valuable consideration; and as such, it was protected by the contract clauses

of the federal constitution, and also by the Fourteenth Amendment, against subsequent state action. The category was essentially different from that of the exemptions passed on by this court in *Railroad Company* v. *Wirt Adams,* 180 U. S., 1. There the power of the new company to take the exemption depended on and was determined by the law as it stood at the time of the company's formation; but in this instance the right of the old company to transmit the exemption by consolidation, and the power of the consolidated company to take the exemption, were both specifically contracted for in the year 1884. Even a reserved power to amend a charter could not lead to this result here claimed.

Stearns v. *Minnesota,* 179 U. S., 223.
Railroad Company v. *County,* 179 U. S., 302.
Smelting Company v. *Colorado,* U. S. Sup. Ct., Jany. 7, 1907.

MAYES & LONGSTREET,
J. M. DICKINSON,
Counsel for Appellant.

APPENDIX.

AN ACT to authorize the City of Vicksburg, in this state, to contract with the Memphis and Vicksburg Railroad Company, or such other railroad company as the said Memphis and Vicksburg Railroad Company may hereafter become merged into or a part of by consolidation or otherwise, for the location of the machine shops of said company at said city, and for other purposes.

Section 1. *Be it enacted by the legislature of the State of Mississippi*, That the City of Vicksburg, through its board of mayor and aldermen, and the Memphis and Vicksburg Railroad Company or such other railroad as said Memphis and Vicksburg Railroad Company may hereafter become merged into or a part of by consolidation or otherwise, be and are hereby respectively authorized and empowered to enter into such contract or contracts with each other relative to the location and maintaining at said city of the machine shops of said railroad company, as they may mutually agree upon, together with such limitation, conditions, privileges, immunities, exemptions from city taxation, settlement of all claims, disputes and demands of the one against the other, relinquishment of all bonds, subscriptions, stock certificates of either party now held or claimed by the other, rights of way through the streets of said city, closing up and discontinuing streets now open and dedicated to the public, and such other things as may be decided and mutually agreed on between said City of Vicksburg and said railroad com-

pany; and such contract or contracts when reduced to writing and signed by the parties duly authorized thereto by the contracting parties, shall be in all respects valid and binding, and may be enforced by either party in any court having jurisdiction thereof.

Sec. 2. Be it further enacted, That said city may contract with said railroad company for an issue and delivery to said company of said city's bonds for such purposes and on such consideration, and bearing such rate of interest and having such time to run as the parties may agree upon, and the election to authorize the issuance of said bonds may be held under the provisions of an act of the legislature of Mississippi entitled an act to authorize counties, cities and towns to subscribe to the capital stock of railroads, approved March 7th, 1882.

Sec. 3. Be it further enacted, That this act take effect and be in force from and after its passage.

Approved, February 22, 1884.

FILED
DEC 17 1907
JAMES H. MCKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 97.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, APPELLANT,

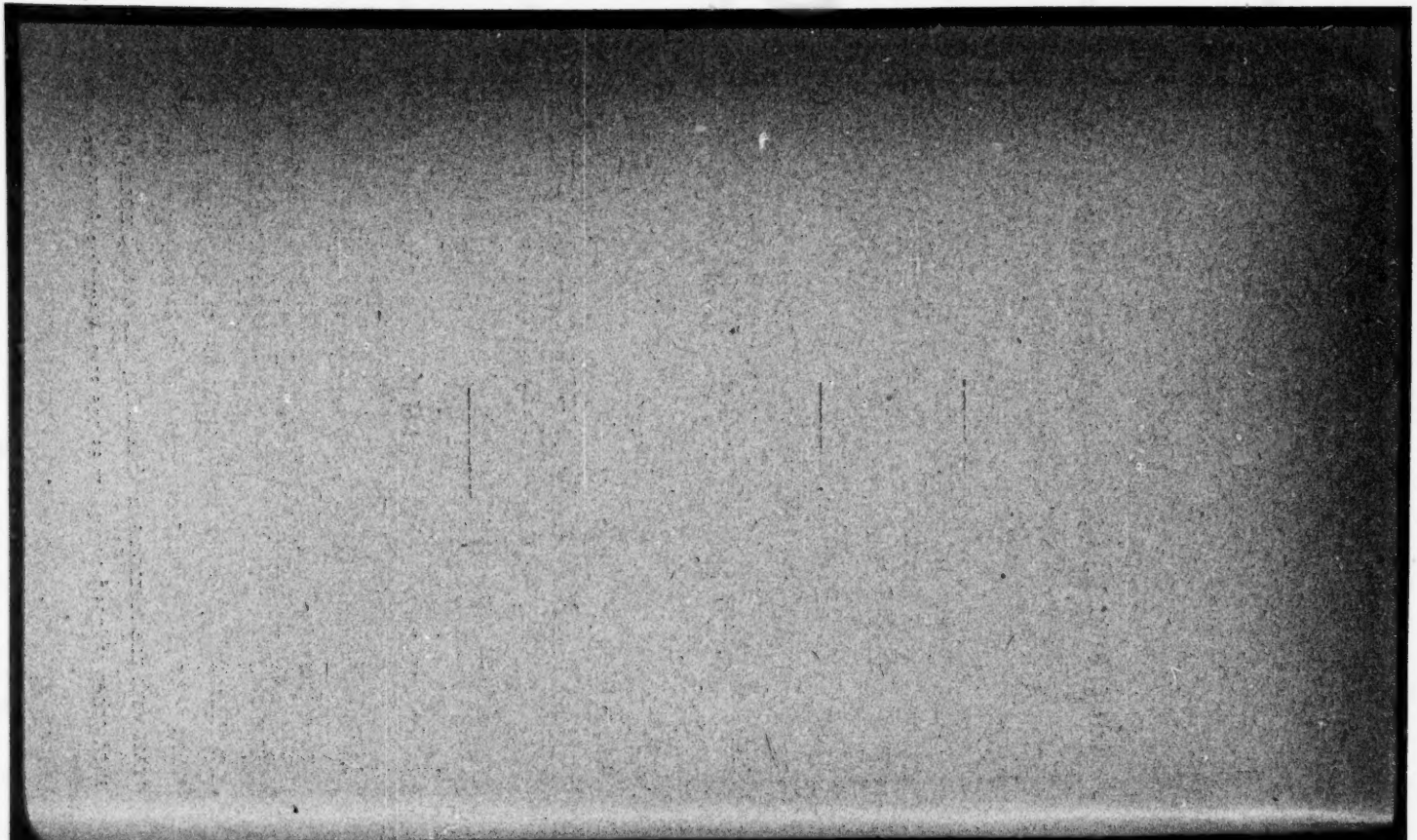
v.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

BRIEF AND ARGUMENT OF

GEORGE ANDERSON,
HANNIS TAYLOR,
Counsel for Appellee.



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THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, *Appellant,*

v.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

Brief and Argument for Appellee.

STATEMENT OF APPELLANT'S CASE.

On December 24, 1901, Appellant filed a bill in said circuit court in which its title to exemption from municipal taxation by the City of Vicksburg is deraigned as follows:

1. Through an act of the Legislature of Mississippi entitled, "An Act to authorize the City of Vicksburg to contract with the Memphis & Vicksburg Railroad Company or such other railroad company as the said Memphis & Vicks-

burg Railroad Company might hereafter become merged into or a part of, by consolidation or otherwise, for the location of the machine shops of said company at said city, and for other purposes," approved February 22, 1884. (See Laws of 1884, page 917.)

2. By a contract, Exhibit 1 to the Bill, entered into on the 11th day of August, 1885, pursuant to said act of the Legislature, between the mayor and aldermen of the City of Vicksburg and the Louisville, New Orleans & Texas Railway Company (being the Company with which the complainant was consolidated) purporting to exempt said railroad company from municipal taxation.

3. By an agreement of consolidation between the Louisville, New Orleans & Texas Railway Company and the Yazoo & Mississippi Valley Railroad Company, the Appellant, made October 24, 1892, by which an attempt was made to assign the immunity from municipal taxation to the Appellant company.

By the act of the legislature of February 22, 1884, Laws of 1884, page 917, the mayor and aldermen of the City of Vicksburg were expressly authorized and empowered to enter into a contract or contracts with the Memphis & Vicksburg Company or any company into which it might thereafter be merged, relative to the location and maintaining at said city of the machine shops of said railroad company, as might be mutually agreed upon, together with such limitations, conditions, privileges, immunities and exemptions from city taxation, settlement of claims, disputes and demands of every kind as might be agreed

upon, and that said contract or contracts, when reduced to writing and signed by the parties duly authorized thereto, should be in all respects valid and binding. By the contract between the mayor and aldermen of the City of Vicksburg and the Louisville, New Orleans & Texas Railway Company, entered into August 11, 1885, pursuant to said act of the Legislature, it was agreed, among other things, that the City of Vicksburg would exempt from all municipal taxation for the period of ninety-nine years, all of the property of the Louisville, New Orleans & Texas Railway Company, or of its successors, or of any company into which it might from time to time be merged by consolidation or otherwise, which should be used for tracks, switches, depots, machine shops, rolling stock, and any and all other railway purposes, except only buildings used for residences or stores. By the articles of consolidation between the Louisville, New Orleans & Texas Railway Company and the Appellant, the Yazoo & Mississippi Valley Railroad Company, dated October 21, 1892, said companies agreed with each other to unite, merge and consolidate their several capital stocks, corporate rights, franchises, privileges, immunities and properties of every kind, real, personal, and mixed. The first article provided that "said consolidation shall be effected by uniting or merging the stock, property and franchises of the party of the first part" (the Louisville, New Orleans & Texas Railway Company) "with and into the stock, property and franchises of the said the Yazoo & Mississippi Valley Railroad Company without disturbing the corporate existence of the last named company or the

formation of any new and distinct corporation, unless such result shall be necessary to give legal effect to this agreement; but whatever may be the legal consequence of the consolidation herein provided for, this agreement is to stand and be effective." The case as thus stated in the bill was made to depend: (1) upon the constitutional validity of the act of February 12, 1884, authorizing the City of Vicksburg to contract for an exemption from municipal taxation; (2) upon the assumption that the contract between said City and the Louisville, New Orleans & Texas Railway Company, dated August 11, 1885, was made strictly in accordance with the authority granted by said act; (3) upon the assumption that the legal effect of the consolidation between the Louisville, New Orleans & Texas Railway Company and the Appellant Company of October 24, 1892, was to assign said right of exemption to said Appellant Company.

DEFENSES MADE FOR APPELLEE.

I.

The defenses made to the bill in question in the circuit court were the following;

1. That the act of the Legislature of Mississippi of 1884 above referred to, authorizing exemption from municipal taxation, is unconstitutional and void.

2. That the agreement made in pursuance of it, being based on a void act of the Legislature of the State, is itself void.

3. That the agreement of consolidation of the Louisville,

New Orleans & Texas Railway Company and the Yazoo & Mississippi Valley Railroad Company, Exhibit 2 to the Bill, had the effect in law to create a new, distinct and independent corporation, and that the consolidation did not have the effect in law to assign or transfer to the new corporation thus created the right of exemption from municipal taxation which the Louisville, New Orleans & Texas Railway Company had, if it had any.

4. That even if the Legislature of the State of Mississippi, through the several acts authorizing the consolidation, had expressly provided that the new corporation thereby formed should be exempted from municipal taxation, the higher law of the Constitution, Section 180 of the Constitution of Mississippi of 1890, would be interpreted as nullifying it to that extent.

The bill in this case was doubtless based upon the decisions of the Supreme Court of the State of Mississippi in the cases of the Mississippi Mills *v.* Cook, 56 Miss., 40, and Natchez, J. and C. R. Co. *v.* Lambert, 70 Miss., 779, in which the Supreme Court of Mississippi committed itself to the doctrine that while all property in the State of Mississippi was the subject of taxation, it need not necessarily be subjected to taxation, and that the Legislature might exempt it from taxation if it saw fit to do so. From the principles announced in those cases it was argued that the Legislature of the State of Mississippi had the right and power to enact the law of 1884 hereinbefore referred to, authorizing the City of Vicksburg to exempt the complainant from municipal taxation for the period of ninety-nine years, as agreed

upon in said contract. But at the time the act of 1884 was passed by the Legislature of the State of Mississippi the Constitution of Mississippi of 1869 was in force, and by Article 12, Section 13 of said Constitution, it was provided that "the property of all corporations for pecuniary profits shall be subject to taxation the same as that of individuals." By Section 20 of the same instrument it was provided that "taxation shall be equal and uniform throughout the State. All property shall be taxed according to its value, to be ascertained as directed by law." Subsequent to the filing of the bill in this case the Supreme Court of the State of Mississippi, in the case of Adams *v.* the Y. & M. V. R.R. Co., 77 Miss., 194, reviewed the provisions of the Constitution of 1869 above referred to and the decisions of the Supreme Court in the cases of the Mississippi Mills *v.* Cook, *supra*, and Natchez, J. and C. Railroad Co. *v.* Lambert, *supra*. In that review it was held that the provision of the Constitution of 1869, Sec. 13, Art. 12, that the property of all corporations for pecuniary profit shall be taxed the same as that of individuals, as well as the other provision (Section 20), requiring that taxation shall be equal and uniform throughout the State and all property taxed in proportion to its value, were mandatory and not directory, as decided in Mississippi Mills *v.* Cook and Natchez, J. and C. Railroad Co. *v.* Lambert. It was held that such provisions deprived the Legislature of the State of Mississippi of all power to exempt the property of such corporations from taxation, and the cases of Mississippi Mills *v.* Cook, and Natchez, J. and C. Railroad Co. *v.*

Lambert, *supra.*, were expressly overruled. Applying the principles announced in Adams *v.* Railroad Co., 77 Miss., 194, to the case at bar, the act of the Legislature of 1884 authorizing the board of mayor and aldermen of the City of Vicksburg to exempt the Louisville, New Orleans & Texas Railway Co. from municipal taxation, was unconstitutional and void, and the contract made between the said railroad company and the City, exempting said railroad Company from taxation, being based upon a void statute, is itself void, and the Louisville, New Orleans & Texas Railway Co., although claiming it, was always without the right of exemption from municipal taxation by the City of Vicksburg. In the case of Adams *v.* Railroad Co., *supra.*, the Supreme Court of Mississippi decided upon the contract, Exhibit 2 to the Bill in this case, that the effect of the consolidation between the Louisville, New Orleans & Texas Railway Company and the Yazoo & Mississippi Valley Railroad Company was to create a new, distinct and independent corporation, and that the consolidation did not have the effect to assign to the Yazoo & Mississippi Valley Railroad Company any exemption from State and County taxes, which the Louisville, New Orleans & Texas Railway Company might have had prior to the consolidation. On appeal this Court affirmed the decision of the Supreme Court of Mississippi, 180 U. S., page 1. This Court, in passing upon the articles of consolidation, said, among other things: "Reading this agreement in connection with the charters of the several companies, and especially with that of the Memphis & Vicksburg R.R. Co. of

March 3, 1882, providing that 'all of the companies so consolidated should be merged into and *become one company* and the company so formed by consolidation shall be deemed and held to be a *corporation* created by the laws of this State,' it is impossible to escape the conclusion that a new corporation was created * * * and that the stockholders of the constituent companies were to become stockholders of the new company, share for share, 'as fully as if new shares of the consolidated company had been issued and exchanged therefor.''' This Court thus held that because a new company was created by virtue of the consolidation, the exemption from State and County taxation theretofore granted to the Louisville, New Orleans & Texas Railway Company and the Memphis & Vicksburg Railway Company was lost, and that the Yazoo & Mississippi Valley Railroad Company, notwithstanding the exemptions from taxation contained in the charters of the company with which it was consolidated, was liable for State and County taxes. It is a part of the history of the State of Mississippi that that company was called upon to pay, in part, because of that consolidation, in the neighborhood of a million and a half dollars of back taxes.

But aside from that view of the case, there is another which is absolutely conclusive against the Appellant's claim of exemption from municipal taxation, and that is that all exemptions from taxation theretofore granted to railroad companies by various acts of the Legislature of the State of Mississippi, were repealed by Sections 180 and 181 of the Constitution of Mississippi of 1890. By Section

180 it is provided that "all existing charters or grants of corporate franchises under which organizations have not in good faith taken place at the adoption of this Constitution, shall be subject to the provisions of this article." By Section 181, which is one of the provisions of that article, is it provided that "the property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals." This Court in the case of Adams *v.* Railroad Co., *supra.*, speaking with reference to that aspect of the case, said: "It is true that in the act of March 2, 1882, authorizing the Baton Rouge Company to consolidate, and in the act of March 3, 1882, authorizing the Memphis & Vicksburg Co. to consolidate, and in the act of February 17, 1882, authorizing the consolidation of the Yazoo Co., there were provisions that the consolidated companies should be entitled to the rights, privileges, franchises, property grants, and immunities belonging to the constituent companies, among which, under the name of 'Immunities' might pass the exemption from taxation, as has been sometimes held by this Court; and had not the constitutional provision of 1890 taken effect before the final consolidation in 1892, we might have been obliged to hold that the consolidated company was entitled to the commutation of taxes provided for in the 21st Section of the charter of the Mobile & Northwestern Co. But it is scarcely necessary to say that if the consolidation of 1892 resulted in a new corporation it would come into existence under the Constitution of 1890 with the disabilities attached thereto, among which is the

provision that the property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals. Even if the Legislature, in these several acts of consolidation, had expressly provided that the new corporation thereby formed should be exempted from taxation, the higher law of the Constitution would be interpreted as nullifying it to that extent." From such decisions, it is clear that any and all exemptions from taxation of any kind, which existed in any of the acts of the Legislature theretofore enacted, including the act of 1884, were expressly repealed by the sections of the Constitution of Mississippi of 1890, hereinbefore referred to. When the consolidation took place, which was on October 24, 1892, none of the railroad companies into which the Y. & M. V. R.R. Co. was consolidated, had any exemption from municipal or other taxation, and in consequence of that fact could not assign or transfer, and did not assign or transfer any exemption from municipal taxation to the Yazoo & Mississippi Valley Railroad Company. Therefore its claim to exemption from municipal taxation is absolutely without merit. Unless this court can be induced to overrule the case of Adams *v.* Yazoo and M. V. R.R. Co., there is really nothing whatever to argue in this record. The Circuit Court, after careful deliberation, concluded that Appellant's case was without merit; and the bill was therefore dismissed with costs.

II.

In the court below counsel for Appellant cited Stearns *v.* Minn., 179 U. S., 223; and Wicomico Co. *v.* Bancroft, 135 Fed. Rep. 977. In the case first cited this Court held that the competency of a State, through its legislature, to make an alleged contract, and the meaning and validity of such contract, are matters which this Court, on writ of error to a state court, must determine for itself by an independent judgment, as an exception to the general rule that it will accept the decision of the State Supreme Court on the construction of the state constitution, though in determining the matter it may lean towards the interpretation placed thereon by the state court. In the second case cited it was held; (1) that a federal court is not bound to follow the construction placed upon a state statute by the local courts in a suit involving rights under the statute which accrued prior to such construction; (2) that where, by special act of the legislature of a State, a railroad company is exempted from state, county, and municipal taxation for a term of years, such grant creates a contract between the state and the company, and those who subsequently become its creditors or succeed to its rights, which is impaired by the State, within the inhibition of the federal constitution, by the taxing of the company's property by the local authorities under the general powers conferred on them by statute. In the case of Northern Central Railway Co. *v.* Maryland 167, U. S., 258, this Court said: "Where a contract is claimed to arise from a state law, and it is held below that a sub-

ent statute has repealed the alleged contract, and effect is thereby given to the subsequent law, the mere question whether the alleged contract has been repealed by the subsequent law is a State, and not a Federal question. In such a case this Court concerns itself, not with the question whether the State law, from which the contract is asserted to have arisen, has been repealed, but proceeds to determine whether the repeal was void because it produced an impairment of the obligations of the contract within the purview of the Constitution of the United States. * * * To state the doctrine in another form, it is this: That where a new corporation is chartered, subject to a constitution which forbids the granting of an irrepealable right, such new corporation cannot become indowed by the effect of a legislative contract with an irrepealable right forbidden by the constitution. If one of the constituent elements of the corporation possessed, prior to the formation of the corporation, such right, and under the assumption that the right itself passed to the new body, it loses its irrepealable character, because the new corporation is subject by the very law of its being to the provision of the constitution forbidding irrepealable grants. The doctrine as just stated has been so frequently declared by this court that it is no longer open to discussion. The whole subject has been so recently fully reviewed and restated, it is sufficient to refer to that case: Yazoo & M. Valley R.R. Co. *v.* Adams, 180 U. S. 1, and authorities there cited." In closing its opinion in that case this Court said: "While we have never hesitated to vindicate the right of individuals or corporations to en-

force the performance of lawful contracts as against subsequent legislation designed to impair them, we have always exacted as a condition that the contract was one which the legislature, or opposite party, had power to make under the constitution, and that the other party was chargeable with knowledge of all it sprovisions in that connection. * * * Being of opinion that the consolidation in question which took place nearly two years subsequent to the adoption of this constitution, was a new grant of corporate franchises, within the meaning of Sec. 180, it follows that it became subject to the provisions of Sec. 191." At an earlier stage of its opinion this Court, in reviewing the decision of the Supreme Court of Miss. in Natchez, J. and C. R. Co. *v.* Lambert, 70 Miss. 179, had said: The Court "held, *first* that the legislature could not grant an exemption to a railway company under the constitution of 1869; *second*, that it could not grant an irrepealable exemption under that constitution; *third*, that a new company was formed by the consolidation of October 24, 1892, and no exemption passed into it; *fourth*, that if the consolidation were a technical merger, still Sec. 180 of the constitution of 1890 prevented any exemption from passing into it; *fifth*, that any such exemption was repealed by the acts of 1884, 1886, and 1890. Manifestly, that Court could not have held the railways liable for the taxes in suit without deciding either that the provision of Sec. 21 did not constitute a legal contract in view of the constitution of 1869, or that no such contract existed in favor of the plaintiffs-in-error in view of the consolidations, or that the subsequent tax legislation of

the State of 1892 and 1894 did not impair the obligation of that contract. All these were Federal questions, the vital one being whether the acts of 1892 and 1894 impaired the obligation of the contract, if any existed." Thus it appears that first the Supreme Court of Mississippi, then this Court, after critical reviews of every possible question presented in this record, have agreed in the conclusion that no contractual right of Appellant has been in any possible way impaired by the laws of Mississippi. This is so obviously an appeal for mere delay that damages should be awarded, a motion for which is now made. In Gibbs *v.* Diekma, 131 U. S., clxxxvi, app. x, this court said: "While Sec. 1010 of the Revised Statutes includes, in express terms, writs of error only, Sec. 1012 provides that appeals from the Circuit and District Courts shall be subject to the same rules, regulations and restrictions as are or may be prescribed in law in cases of writs of error. This gives us authority to adjudge damages for delay on appeals as well as writs of error, and our power is not confined to money judgments only."

Respectfully submitted,

GEORGE ANDERSON,

HANNIS TAYLOR,

Counsel for Appellee.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY *v.* CITY OF VICKSBURG.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 97. Argued February 28, 1908.—Decided April 6, 1908.

A corporation formed by the consolidation of several existing corporations is subject to the constitution and laws existing at the time of the consolidation in the same manner as all other corporations formed under the organic law of the State; and where the formation of the consolidated corporation is not imposed upon it, the constitution and laws in force become the law of its corporate being and if they prohibit the exemption of property of corporations from taxation such an exemption existing in favor of one of the constituent companies cannot be transferred to the consolidated corporation, and under such circumstances the exemption is not within the protection of the contract clause of the Constitution of the United States.

An exemption in favor of a Mississippi corporation granted by ordinance prior to 1890, *held*, not to inure to the benefit of a consolidated corporation, of which the exempted corporation was one of the constituent companies, organized after the adoption of the state constitution of 1890.

THE facts are stated in the opinion.

Mr. Edward Mayes, with whom *Mr. J. M. Dickinson* was on the brief, for appellant:

The provision of the act of 1884 is materially different from

the railroad charter provision which formed the subject of controversy in *Railroad Company* v. *Adams*, 77 Mississippi, 194, affirmed by this court, 180 U. S. 1. It does not fall within sec. 13, Art. 12 of the Mississippi constitution of 1869, nor within the decision of those cases, for the reason that it does not undertake to create an exemption such as is by them condemned.

The effect of the act of 1884, and its only effect as to this, is to empower the city of Vicksburg to contract for the location of the machine shops within its limits, and in and by such contract, if the municipal authorities should deem it to the interest of the city, to extend as a consideration, an exemption from municipal taxation. But such exemption, when extended, was to be and could only be, the act of the city, and not the act of the legislature. The exemption is conditioned upon and only exists so long as the shops are maintained upon the property.

It was not by the legislature designed to be, and it was not, the grant of an exemption to the railroad company, but it was the grant of a certain power to the city. In fact nothing was thereby granted to the company; because as to this, the company itself, and for its own part, had already the power to make such a contract.

The contract of 1884 was validly made under the act of 1884, a constitutional law; and it therefore was beyond the power of the State to repeal, by either statute or constitution. The recognition of this proposition pervaded the entire litigation in the *Mississippi tax cases* reported in 77 Mississippi, and 180 U. S., the entire controversy in them being either that the exemption was void *ab initio* because of the constitution of 1869, or else that it was lost by the consolidation of 1892, which created a new company, subject in all things to the constitution of 1890 and the code of 1892; in short, an abandonment voluntarily made.

The contract was made under the law; and whatever might be the losses of the railroad companies, in a general way, by

the consolidation of 1892 under the constitution of 1890, this particular exemption was not lost. It became, in 1884, a concrete, vested contract right, acquired on and for a valuable consideration; and as such, it was protected by the contract clause of the Federal Constitution, and also by the Fourteenth Amendment, against subsequent state action. In this instance the right of the old company to transmit the exemption by consolidation, and the power of the consolidated company to take the exemption, were both specifically contracted for in the year 1884. Even a reserved power to amend a charter could not lead to this result here claimed. *Stearns* v. *Minnesota*, 179 U. S. 223; *Railroad Company* v. *County*, 179 U. S. 302; *Smelting Company* v. *Colorado*, 204 U. S. 103.

Mr. Hannis Taylor, with whom *Mr. George Anderson* was on the brief, for appellees.

MR. JUSTICE DAY delivered the opinion of the court.

The case originated in a bill in equity filed by the Yazoo and Mississippi Valley Railroad Company against the Mayor and Aldermen of the city of Vicksburg, to enjoin the collection of certain municipal taxes on the property of the railroad company assessed for the year 1901.

The bill was demurred to; the court below sustained the demurrer and rendered a final decree dismissing the bill. The case involving constitutional questions, was appealed directly to this court.

The allegations of the bill show that on February 22, 1884, the legislature of Mississippi passed an act authorizing the city of Vicksburg to enter into a contract with the Memphis and Vicksburg Railway Company, of which the following is the pertinent section:

"That the city of Vicksburg, through its Board of Mayor and Aldermen, and the Memphis and Vicksburg Railroad Company, or such other railroad as said Memphis and Vicks-

burg Railroad Company may hereafter become merged into, or a part of, by consolidation or otherwise, be and are hereby respectively authorized and empowered to enter into such contract or contracts with each other relative to the location and maintaining at such city of the machine shops of said railroad company, as they may mutually agree upon, together with such limitation, conditions, privileges, immunities, exemptions from city taxation, settlement of all claims . . . and such other things as may be decided and mutually agreed on between said city of Vicksburg and said railroad company," etc.

Under this authority, on August 11, 1885, a contract was made with the Louisville, New Orleans and Texas Railway Company, one of whose constituent companies was the Memphis and Vicksburg Railroad Company, named in the act above set forth. The pertinent parts of that contract are as follows:

"Second. Said city agrees to and does hereby exempt from all municipal taxation for a period of ninety-nine years all of the property used or which shall or may be used for tracks, switches, depots, machine shops, rolling stock, and any and all other railway purposes (except only buildings for residences or stores) of the Louisville, New Orleans and Texas Railway Company or of its successors, or of any company into which it may from time to time be merged by consolidation or otherwise, or of any company which, upon foreclosure or reorganization, may become the owners of its line of railroad within said city.

"Sixth. The general or main building, repairing and machine shops of the Louisville, New Orleans and Texas Railway Company, or its successors, [shall be] located and shall be permanently kept and maintained within the present limits of the city of Vicksburg, north of Fairground street, and any failure so to do shall forfeit to the city all lands granted to said railway company by the city, and all lands purchased by said railway company for and on which to locate said shops

as hereinafter in this section prescribed, and shall also annul and forfeit all the privileges and immunities granted by this contract, including the right to locate and keep its freight depot south of Clay street," etc.

The railway company, it is averred, complied with the act and now insists upon its exemption from taxation.

The complainant, the Yazoo and Mississippi Valley Railroad Company, consolidated, on October 24, 1892, with the Louisville, New Orleans and Texas Railway Company, and in this consolidation undertook to acquire for the appellant the exemption from taxation under the contract of August 11, 1885, hereinbefore referred to.

The learned counsel for the appellant concedes that unless this case can be distinguished in principle from *Yazoo & Mississippi Valley Railway Company* v. *Adams*, 180 U. S. 1, the decree of the Circuit Court must be affirmed.

The *Adams case* came here on writ of error to review the judgment of the Supreme Court of Mississippi in the same case, 77 Mississippi, 194. The Mississippi court, whose judgment was affirmed in this court, held that a grant of exemption from taxation to a railroad company was void under the constitution of 1869 of that State, and that the organization of a consolidated company under the constitution of 1890 cut off an exemption from taxation granted to a constituent company prior to the adoption of that constitution. This judgment was affirmed, as we have said, in this court which, speaking by Mr. Justice Brown, held that the consolidation of October 24, 1892, created a new corporation, and that while it might be true that the exemption in question would pass to the consolidated company by the terms of the legislation under review, yet when the constitutional provision of 1890 took effect the consolidated corporation, organized under that constitution, was no longer entitled to the exemption. That constitution contained certain clauses which were then under review, as follows:

"SEC. 180. All existing charters or grants of corporate

franchises under which organizations have not in good faith taken place at the adoption of this constitution, shall be subject to the provisions of this article," etc.

"SEC. 181. The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent, as property of individuals, etc. Exemptions from taxation, to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature."

This court held that even if the legislature, in the several acts of consolidation, had expressly provided that the new corporation should be exempted from taxation, such laws would be nullified by the provision of the constitution of 1890, requiring that the property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals.

Conceding the force of the decision in the *Adams case*, the learned counsel for the railroad company undertakes to differentiate that case from this upon the ground that the legislation of the State of Mississippi (act of February 22, 1884) authorized a contract to be made with the railroad company for an exemption from taxation upon valuable considerations to be performed by the company, and that the grant in the *Adams case* was a mere legislative exemption from taxation; and the counsel insists that the validity of such legislation as is now under consideration has been sustained by the Supreme Court of Mississippi in a case decided by that court after its decision in *Railroad Company* v. *Adams*, 77 Mississippi, in the case of *Adams* v. *Tombigbee Mills*, 78 Mississippi, 676, in which an act of the legislature granting an exemption to certain factories for the manufacture of cotton or woolen goods, etc., for a period of six years from the completion of the factory, was sustained. But an examination of the opinion in that case convinces us that the Mississippi court had no intention to

depart from its ruling in the case in 77 Mississippi, for that case is expressly distinguished in the opinion, and, among other things in the course of the opinion, the court says:

"This appellee never lost its exemption by consolidating with any other corporation. It has always retained 'the precise corporate existence' it originally had. Its exemption was therefore continued by section 181 of the constitution of 1890, subject to legislative repeal, but it has never been repealed." 78 Mississippi, 692.

And again, on page 693:

"But a very different state of case existed, as already pointed out, as to the exemption denied in *Yazoo &c. R. R. Co.* v. *Adams*, 77 Mississippi, 194."

We think a reading of the opinion makes it clear that the Supreme Court of Mississippi differentiated the cases, and did not intend to depart from its ruling in the former case when similar circumstances were brought to its attention.

Apart from the ruling of the Mississippi court, we think it is entirely clear that the effect of organizing the consolidated corporation after the adoption of the Mississippi constitution of 1890 was to bring the new corporation within the terms and limitations of that constitution, which prohibited exemption of corporate property from taxation. The exemption to the former constituent company could not inure to the consolidated company without, in effect, ignoring the constitutional provision.

This subject was before this court and fully considered in the recent case of *Rochester Railway Company* v. *Rochester*, 205 U. S. 236, wherein it was held that where a corporation was incorporated under a general act creating certain obligations, it could not receive by transfer from another company an exemption inconsistent with its own charter or the constitution and laws of the State then applicable, and this even though the legislative authority undertook to transfer the exemption by words which clearly included it.

In that case previous decisions of this court are collated

on page 254. The court, speaking by Mr. Justice Moody, said:

"The principle governing these decisions, so plain that it needs no reasoning to support it, is that those who seek and obtain the benefit of a charter of incorporation must take the benefit under the conditions and with the burdens prescribed by the law then in force, whether written in the Constitution, in general laws or in the charter itself."

The formation of the consolidated company was not imposed upon the complainant; it had the privilege of standing upon such rights as it had by contract or otherwise under the former legislation in force before the adoption of the new constitution. When it saw fit to enter into the consolidation and form a new corporation in 1892 the constitution then in force in the State became the law of its corporate being, and the requirement that corporate property should not be exempt from taxation then became binding upon it, as upon all other corporations formed under the new organic law.

We find no error in the judgment of the Circuit Court for the Southern District of Mississippi, and the same is

Affirmed.